163 U.S. 499

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. ~~1135.~~ ~~652~~ 337

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

CHARLES R. ALLEN.

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FILED MARCH 5, 1894.

RETURN FILED APRIL 17, 1894.

(15519.)

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NO. 1135.

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vs.

CHARLES R. ALLEN.

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1 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable judges of the United States circuit court of appeals for the ninth circuit, greeting:

Being informed that there is now pending before you a suit in which the United States is plaintiff in error and Charles R. Allen is defendant in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the district court of the United States for the northern district of California, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme

2 Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of March, in the year of our Lord one thousand eight hundred and ninety-four.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

3 We certify that the annexed stipulation was duly filed in the office of the clerk of our United States circuit court of appeals for the ninth circuit on the 10th day of April, 1894, and as in said stipulation provided the same is hereby annexed and returned into the honorable the Supreme Court of the United States as a return to this writ.

By the court.

[SEAL.] F. D. MONCKTON,
Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

SAN FRANCISCO, CAL., *April* 10, 1894.

(Indorsed:) Supreme Court of the United States, No. 1135, October term, 1893. The United States vs. Charles R. Allen. Writ of certiorari.

4 In the Supreme Court of the United States, October term, 1893.

THE UNITED STATES, PETITIONER,
vs. No. 1135.
CHARLES R. ALLEN, RESPONDENT.

On a writ of certiorari to the circuit court of appeals for the ninth circuit.

Stipulation.

It is hereby stipulated between the counsel for the parties to the above-entitled cause that the certified copy of the record of the cause in the circuit court of appeals for the ninth circuit, now on file in the Supreme Court, may be treated as the return to the writ of certiorari issued herein.

LAWRENCE MAXWELL, JR.,
Solicitor General.

CHAS. PAGE,
Counsel for Respondent.

5 (Indorsed:) The United States, pltf's in error, *v.* Charles R. Allen. Stipulation filed April 10, 1894. F. D. Monckton, clerk U. S. circuit court of appeals, ninth circuit.

6 (Indorsed:) Case No. 15519. Supreme Court U. S., October term, 1893. Term No. 1135. The United States, pltf. in error, *vs.* Charles R. Allen. Writ of certiorari and return. Filed Apr. 17, 1894.

7 No. 101.

United States circuit court of appeals for the ninth circuit.

Transcript of record.

THE UNITED STATES }
vs.
CHARLES R. ALLEN. }

Error to the district court of the United States for the northern district of California.

(Endorsed:) Filed March 6, 1893, F. D. Monckton, clerk.

8 In the district court of the United States for the northern district of California.

CHARLES R. ALLEN, PLAINTIFF, }
vs.
THE UNITED STATES, DEFENDANT. }

Charles R. Allen, a resident of the city of Oakland, county of Alameda, in the northern district of California, filed this his petition in an action to recover the amount of certain drawbacks due him by the United States on imported bituminous coal used for fuel on board of vessels of the United States, and complains and avers as follows:

I.

That pursuant to the provisions of an act of the Congress of the United States approved March 3d, 1883, entitled "An act to reduce internal revenue taxation and for other purposes," and the act of Congress approved June 19th, 1886, entitled "An act to abolish certain fees to American vessels, and to amend the laws relative to shipping commissioners, seamen, and owners of vessels, and for other purposes," providing for the allowance and payment of a drawback on bituminous coals imported from foreign countries into the United States, and afterwards used for fuel on board of vessels of the United States propelled by steam, which are engaged in the coasting trade of the United States, or in the trade with foreign countries under such regulations as the Secretary
9 of the Treasury of the United States shall provide, the said Secretary did, on the 8th day of September, 1887, provide and promulgate certain regulations for the said allowance and payment in the case in

said statute provided, a copy of which regulations is hereunto annexed and hereby referred to and made a part hereof. That said regulations have since the date thereof been the regulations applied for purposes of drawback to all coasting steam vessels, and have not been revoked, but the same are still in force.

II.

That heretofore, to wit, on the 5th day of February, 1891, the plaintiff, then and there being the owner of certain bituminous coals theretofore imported into the United States from a foreign country, which coals had, on being imported, paid the duty provided by said act of Congress, shipped thirty tons of said coal on the American steam vessel "Humboldt," a vessel of the United States engaged in the coasting trade thereof, which coal so shipped was intended for use as fuel on board of said vessel; and this plaintiff did thereafter, on the 12th day of said February, 1891, being the owner of said coals, ship on board of said vessel thirty-three tons of bituminous coals, imported as aforesaid for use on board thereof as fuel in the trade aforesaid; and this plaintiff did thereafter, on the 16th and 21st days of said February, being the owner of said coals, ship on board of said vessel the further amounts of thirty-three and one-half tons and twenty-one tons of bituminous coals, imported as aforesaid, for the use on board thereof as fuel in the trade aforesaid.

10

III.

That at least three hours before each of the shipments aforesaid, the plaintiff filed with the surveyor of customs at the port of San Francisco an application for the inspection, weighing, and lading thereof, in accordance with the terms prescribed by the said regulations of the Secretary of the Treasury, and requested that the said surveyor issue the order to the weigher of the customs department by the said regulations required to be issued, in order that the said coals might be inspected and weighed and the returns thereof delivered to the collector of the port and revenue district of San Francisco; but the said surveyor then and there declined and refused to issue the said order to the weigher as required, and the same, notwithstanding the said application, was not issued, nor was said coal inspected or weighed as required by said regulations. That prior to the time the said applications and each of them were made the plaintiffs had filed the bonds required by the said regulations, and the same had been accepted by the officers therewith intrusted.

IV.

That within ten days after the expiration of the said month of February, 1891, the plaintiff, in accordance with said regulations, filed with the said collector an entry for drawback on the coal so shipped on said "Humboldt," setting forth the quantity taken on board under each of the applications hereinbefore described, in the form required by said regulations, and accompanied the said entry with his oath in the form set forth

11 in said regulations, and then and there requested that a certificate of drawback on the coals so shipped during the said month on said

steamship, payable twenty days thereafter, as prescribed by said regulations, be issued to him, but the said officer then and there refused to issue the same or to pay the said drawback, or to recognize the right of the plaintiff thereto; and this plaintiff further avers that except in receiving the application for weighing the said officers refused to take any step or to do anything whatever in the matter of said drawback, notwithstanding the provisions of said statutes and of said regulations in that behalf for the benefit of this plaintiff.

V.

That the coal laden as aforesaid on board of said "Humboldt" was of the actual weight hereinbefore set forth, and was thereafter actually consumed as fuel in said vessel, and was not, nor was any part thereof, relanded in the United States.

VI.

That twenty days after the filing of the entry last described the plaintiff became and was entitled to a certificate of drawback for the sum of seventy-five cents per ton, shipped as aforesaid, less one per centum on said amount, to wit: Ninety-three 94–100 dollars, and to payment of said amount.

That no part of said amount has been paid to the plaintiff, and the same is now due and owing to him.

Wherefore plaintiff prays judgment upon the facts and the law
12 against the defendant, the United States, for the sum of ninety-three 94–100 dollars ($93.94), with interest from the 20th day of March, 1891, and for costs.

(Signed) PAGE & EELLS,
Attorneys for Plaintiff.

WEBBER.

The regulations of June 6th, 1885, have been amended by Department letter of September 8th, 1887, to read as follows, and will supercede all others on the same subject.

CIRCULAR.

Drawback on bituminous coal used for fuel on tug-boats and local steamers and lighters.

1885.
Department No. 30.
Division of Customs.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., June 6th, 1885.

To collector of customs and others:

With a view of reducing the clerical work in the connection with allowances of drawback on coal taken for fuel on board tugboats, harbor

and local steamers, and lighters, the regulations of 1885, articles 951 to 953, both inclusive, are supplemented as follows:

In lieu of the entry form No. 270 (article 952) the owner of the coal or his agent, must file with the surveyor of customs for inspection, weighing, and lading, in the following form:

13 Form No .

SURVEYOR OF CUSTOMS,
Port of , 188 .

SIR: I have to request that you will cause an official inspection, weighing and shipment to be made of tons of bituminous coal, Ex. from to be taken for fuel on board the steamer .

, *Owner.*

Upon receipt of above, the surveyor will issue the following order on Form No. .

To the weigher, port of , 188 .

SIR: You will superintend the transfer, weighing, and lading of the coal described in the accompanying application on board the steamer , and when such weighing and lading are completed, make due return to that effect.

, *Surveyor.*

If the coal is laden on board the steamer upon which it is to be consumed, sufficiently contiguous to the importing vessel, or the scales at which it was weighed for the weigher to see it go on board.

The return of the weigher will be in the following form:

Form No. .

PORT OF , 188 .

This certifies that tons of the coal described in the accompanying application were weighed under my direction and supervision on above date. Tons Ex. Tons Ex. &c., and that the same were laden on board the str. .

, *Weigher.*

14 If the coal is not laden near enough for the weigher to see it go on board, he will omit that portion of the above certificate, and the fact that it was laden will be certified by an inspector.

The return of the inspector will be in the following form:

Form No. .

Port , 188 .

This certifies that tons of coal, described in the accompanying application, were laden on board the steamer , under my supervision on above date.

, *Inspector.*

The number of tons in the foregoing certificate must be written out in full and not in figures. The application, with the several indorsements thereon, will be returned by the surveyor to the collector as soon as each shipment is completed, who, upon due entry as per form below being made, will estimate the amount of drawback and endorse upon the import entry and the six-months' bond the actual quantity of coal shipped, with the amount of drawback to be paid, or, in case of withdrawal, to be endorsed upon the warehouse bond.

Within ten days after the expiration of each month, the owner of the coal shipped, or his agent, must file an entry for drawback for each steam vessel, setting forth the quantity taken on board under each application, in the following form:

Form No. .

15 Entry of bituminous coal shipped under official supervision by during the month ending , 188 , and used for fuel on board the steamer , engaged in .

When imported.	Importing vessel.	Importer.	Quantity.	Drawback.

I solemnly, sincerely, and truly that the coal described in the above entry application was laden for fuel on board the above-named vessel, and has not been relanded at any port or place within the United States; that the coal was imported as above specified and duties thereon paid, or secured to be paid, at this port, on entry Nos. , dated , 188 .

, *Owner.*

to before me this day of , 188 .

, *Collector.*

The certificate of drawback on coal shipped under the foregoing regulations will be made payable twenty days after the expiration of the month in which the coal was taken on board.

The blanks of the application, order of surveyor, and the returns of the officers will be printed on one sheet of paper, using both sides.

When the entry has been filed and sworn to, it will be transmitted by messenger to the debenture clerk in auditor's division.

16 In all cases proper bonds must be filed before any applications to ship is acted upon. The weigher will keep an account of the actual expense of weighing the coal, and will certify it to the collector of each application at time of transmission.

JOHN S. HAGER, *Collector.*

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Charles R. Allen, being duly sworn, deposes and says: That he is the plaintiff in the above-entitled cause; that he has read the foregoing complaint and petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and that as to those matters he believes it to be true.

(Signed) CHARLES R. ALLEN.

Subscribed and sworn to before me this 4th day of April, 1891.

[SEAL.] (Signed) ALVAN FLANDERS,
Notary Public.

(Endorsed:) No. 1295. United States district court, northern district of California. Charles R. Allen vs. The United States. Complaint in action to recover drawback on coals, etc. Filed April 6th, 1891. (Signed) Southard Hoffman, clerk.

17 In the district court of the United States for the northern district of California.

CHARLES R. ALLEN, PETITIONER,
vs.
THE UNITED STATES.

UNITED STATES OF AMERICA,
Northern District of California, ss:

Charles Page, being first duly sworn, says: I am a member of the firm Page & Eells, attorneys for the petitioner in the above-entitled cause. I am a male citizen of the United States, over the age of twenty-one years. On this 6th day of April, 1891, at the request of the petitioner, I handed to Mr. Charles A. Garter, United States attorney for the northern district of California, a certified copy of the petition of said petitioner, now on file in said court in the above-entitled cause, and on the same day on like bequest, mailed a certified copy of the said petition to the Attorney-General of the United States, at Washington, D. C., by registered letter.

(Signed) CHAS. PAGE.

Sworn to before me this 6th day of April, 1891.

(Signed) J. S. MANLEY,
Commissioner U. S. Circuit Court, Northern District of California.

(Endorsed:) No. 1295. United States district court, northern
18 district of California. Charles R. Allen vs. The United States. Affidavit of service of copies of petition. Filed April 6th, 1891. (Signed) Southard Hoffman, clerk, (signed) by J. S. Manley, deputy clerk.

In the district court of the United States for the northern district of California.

CHARLES R. ALLEN, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT.

Demurrer.

Now comes the defendant The United States, by Charles A. Garter, esq., United States attorney for the northern district of California, and demurs to the plaintiff's complaint on file herein, and for cause of demurrer alleges:

I.

That said complaint and petition does not state facts sufficient to constitute a cause of action against the defendant.

II.

That said complaint and petition is unintelligible and uncertain in this, to wit: That it does not appear in or by said complaint when the coals, upon which a drawback is alleged to be due, were imported into the United States.

(Signed) CHARLES A. GARTER,
Attorney for Defendant and United States Attorney.

19 I hereby certify that I am the attorney for the defendant in the above-entitled action, and that in my opinion the foregoing demurrer is well founded in point of law and proper to be filed in the above action.

(Signed) CHARLES A. GARTER,
United States Attorney and Att'y for Defendant.

(Endorsed:) No. 1295. District court of the United States, northern district of California. Charles R. Allen vs. The United States. Demurrer. Filed June 17th, 1891. (Signed) Southard Hoffman, clerk. By (signed) J. S. Manley, deputy clerk.

At a stated term of the district court of the United States of America for the northern district of California, held at the courtroom in the city of San Francisco, on Wednesday, the 19th day of August, in the year of our Lord one thousand eight hundred and ninety-one. Present, the honorable E. M. Ross, district judge for southern district of California, presiding.

CHARLES R. ALLEN
vs.
THE UNITED STATES OF AMERICA. } No. 1295.

The demurrer to the complaint herein this day came on for hearing, and said demurrer was duly argued by C. A. Shurtleff, esq., assistant U.

S. attorney, in support thereof, and by Charles Page, esq., attorney for the complainant, in opposition thereto, and submitted to the court for consideration and decision on briefs to be filed.

20 In the district court of the United States for the northern district of California.

CHARLES R. ALLEN)
vs.
UNITED STATES.)

Opinion overruling demurrer.

There is but a single question presented by the demurrer to the complaint in this case, and that is: Does the act of Congress of October 1, 1890 (26 Statutes, 600), commonly known as the McKinley bill, repeal the provision of the act of March 3, 1883 (22 Statutes, 511), as amended by the act of June 19, 1886 (24 Statutes, 81), granting a drawback in certain cases upon bituminous coal imported into the United States?

That portion of the act of March 3, 1883, fixing a duty on coal is found in Schedule N of the act, and reads as follows:

"Coal, bituminous and shale, seventy-five cents per ton of twenty-eight bushels, eighty pounds to the bushel. A drawback of seventy-five cents per ton shall be allowed on all bituminous coal imported into the United States which is afterwards used for fuel on board of vessels propelled by steam which are engaged in the coasting trade of the United States, or in the trade with foreign countries, to be allowed and paid under such regulations as the Secretary of the Treasury shall prescribe."

By section 10 of the act of June 19, 1886, it was declared:

"That the provisions of Schedule N of 'An act to reduce inter-
21 nal revenue taxation, and for other purposes,' approved March 3, 1883, allowing a drawback on imported bituminous coal used for fuel on vessels propelled by steam, shall be construed to apply only to vessels of the United States."

That portion of Schedule N of the act of October 1, 1890, entitled "An act to reduce the revenue and equalize duties on imports, and for other purposes," reads:

"Coal, bituminous and shale, seventy-five cents per ton of twenty-eight bushels, eighty pounds to the bushel; coal, slack or *culm*, such as will pass through a half-inch screen, thirty cents per ton of twenty-eight bushels, eighty pounds to the bushel."

If there was nothing more in the act of October 1, 1890, upon the subject in question, there would be no difficulty in reaching the conclusion announced by the Attorney-General in an opinion given by him in answer to a similar question propounded to him by the Secretary of the Treasury (19, Opinions of Attorney-General, 687); for, as he there says, and as was said in substance by Judge Lacombe in re Straus, et al., 46 Federal Reporter, 522, the act of October 1, 1890, was manifestly intended as a complete revision of the tariff laws, and, therefore, the law upon the subject in hand is to be ascertained by reference to the terms and provisions of that act. And the omission from that portion of Schedule N, of the

act of October 1, 1890, imposing a duty of seventy-five cents a ton on bituminous coal, of the drawback clause in relation to such coal contained in the act of March 3, 1883, as amended by section 10 of the act of June, 19, 1886, would, in the absence of any other, or further provision
22 upon the subject, clearly manifest the intention of Congress to abolish such drawback. But the act of October 1, 1890, declares in section 25 "that where imported materials on which duties have been paid, are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less one per centum of such duties, provided that when the articles exported are made in part from domestic materials, the imported materials, or the parts of the articles made from such materials, shall so appear in the completed articles that the quantity or measurement thereof may be ascertained. And provided further, that the drawback on any article allowed under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of custom duties when exported, shall in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used, and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either, or to the person to whom such manufacturer, producer, exporter, or agent shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe."

It is upon the true construction of this section that the decision in the present case, in my opinion, hinges.

23 It is urged on the part of the Government that section 25 deals exclusively with drawbacks upon exports, and that the word "article" in the second proviso "means and refers to an exported article and to no other. An analysis of the section does not sustain the contention. The section provides in distinct terms for a drawback, first, on all articles wholly manufactured from imported materials and thereafter exported; second, for a drawback on all articles made partly from imported materials and thereafter exported. This language, as said by plaintiff's counsel, covers every possible manufacture made in this country, whether wholly or partially only of foreign materials, and therefore exported. These provisions are followed by the proviso that the drawback allowed "under existing law on any article shall be continued at the rate herein provided;" that is to say, the amount returned shall be that of the duty paid, less one per centum. There could be no clearer recognition than is here expressed of the fact that there were at the time of the passage of the act of October 1, 1890, existing laws providing for drawbacks. Among them, as has been seen, was the act of March 3, 1883, as amended by that of June 19, 1886, giving a drawback on bituminous coal imported into this country and used on steam vessels of the United States. This drawback was, therefore, by the express language of the second proviso of section 25 of the act of October 1, 1890, continued, but at the rate provided in that section, to wit, the amount of duty paid, less one per centum.

This, it seems to me, is the natural and ordinary meaning of plain language.

There is not only no authority in the court to interject by construc-
24 tion the word "exported," as the attorney for the Government contends should be done, before the word "article" in the proviso in question, but it would in effect be so to construe that proviso as to make it apply to drawbacks on exported articles specifically provided for in the preceding clauses of the section; that is to say, to drawbacks on articles manufactured in this country, wholly or partially of foreign materials and thereafter exported. The court is not at liberty to say that Congress meant by the words embodied in the proviso in question to provide for the same drawbacks it had immediately before made specific provision for; nor is it at liberty to hold that the legislature in declaring "that the drawback on any article allowed under existing law shall be continued at the rate" specified in the section, did not mean what its language naturally and plainly imports. It is true that ordinarily the office of a proviso is to restrain or qualify some preceding matter, and will be so restricted in the absence of anything in its terms, or in the subject it deals with, indicating an intention to give it other and broader effect; but where, as in the present case, to restrict it to the matter preceding it, would, as has been shown, make it mean precisely the same thing as the clause to which it is appended, the language employed should be given the natural and ordinary meaning it conveys as an independent clause. "Like everything else, interpretation has its limits, beyond which it can not legitimately go. Where the legislative meaning is plain, there is not only no occasion for rules to aid the intrepretation, but it is contrary to the rules to employ them.
25 The judges have simply to enforce the statute according to its obvious terms." (Bishop on the Written Laws, section 72. Thornlly vs. U. S., 113 U. S., 313.)

The laws existing at the time of the passage of the act of October 1, 1890, allowing drawbacks, were not uniform. In some cases the drawback was fixed at the amount of duties paid, less ten per cent; in others, the deduction was one per cent; and by the act of March 3, 1883, the full amount of duty paid on bituminous coal was allowed as a drawback. (Revised Statutes, sections 3017, 3026; 18 Statutes, 340; 23 Statutes, 57.)

By the second proviso of section 25 of the act of October 1, 1890, the amount of drawback allowed is placed on all articles at a uniform rate, with certain exceptions specially provided for elsewhere in the act, as, for example, in paragraph 322 (26 Statutes, 588), in relation to salt.

The provision of the act of March 3, 1883, in regard to that article, was as follows: "Salt in bags, sacks, barrels, or other packages, twelve cents per one hundred pounds; in bulk, eight cents per one hundred pounds: Provided, That exporters of meats, whether packed or smoked, which have been cured in the United States with imported salt, shall, upon satisfactory proof, under such regulations as the Secretary of the Treasury shall prescribe, that such meats have been cured with imported salt, have refunded to them from the Treasury the duties paid on the salt so used in curing such exported meats in amounts not less than one hundred dollars: And provided further, That imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fish-
26 eries and in curing fish on the shores of the navigable waters of the United States under such regulations as the Secretary of the

Treasury shall prescribe; and upon proof that the salt has been used for either of the purposes stated in this proviso the duties on the same shall be remitted. (22 Statutes, 514.)

By the act of October 1, 1890, the order of the enactment is somewhat changed, but it is in substance the same, and is as follows: "Salt in bags, sacks, barrels, or other packages, twelve cents per one hundred pounds; in bulk, eight cents per hundred pounds: Provided, That imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries and in curing fish on the shores of the navigable waters of the United States, under such regulations as the Secretary of the Treasury shall prescribe; and upon proof that the salt has been used for either of the purposes stated in this proviso the duties on the same shall be remitted: Provided further, That exporters of meats, whether packed or smoked, which have been cured in the United States with imported salt, shall, upon satisfactory proof, under such regulations as the Secretary of the Treasury shall prescribe that such meats have been cured with imported salt, have refunded to them from the Treasury the dues paid on the salt so used in curing such exported meats, in amounts not less than one hundred dollars. (26 Statutes, 588.)

This is cited on the part of the Government as illustrative of the method adopted and pursued by Congress in the act of October 1, 1890, when providing for the retention of existing drawback rights in respect to imported articles passing into home consumption and not thereafter
27 exported. The answer to this is that the case of the use of imported salt from a bonded warehouse in curing fish not exported, as permitted by the first provision of the above cited paragraph of the act of 1890, there is a remission of duties, not the allowance of a drawback, which latter necessarily implies the former payment of duty. And in the case of the drawback permitted by the second provision of the paragraph on imported salt used in curing meats afterward exported, the provision is that there shall be refunded from the Treasury the duties paid on the salt so used in curing such exported meats, in amounts not less than one hundred dollars. It is manifest that these provisions could not be brought within the general language employed in the second proviso of section 25 of the act declaring that drawbacks allowed "under existing law on any article shall be continued at the rate herein provided;" that is to say, the amount returned shall be that of the duty paid, less one per centum, and therefore a special provision in relation to salt became a necessity.

Demurrer overruled, with leave to the defendant to answer within the usual time.

Ross,
District Judge.

(Endorsed:) Filed Sept. 29th, 1892. Southard Hoffman, clerk. By J. S. Manley, deputy clerk.

At a stated term of the district court of the United States of America for the northern district of California, held at the court room in
28 the city of San Francisco on Thursday, the 29th day of September, in the year of our Lord one thousand eight hundred and ninety-two. Present, the honorable Wm. W. Morrow, Judge.

CHARLES R. ALLEN
vs. } No. 1295.
THE UNITED STATES OF AMERICA.

In this cause, the demurrer to the complaint having been heretofore submitted to the Hon. E. M. Ross, sitting in the court, and the said E. M. Ross having rendered his opinion overruling the said demurrer, it is by the court now here ordered that the said demurrer be, and the same is hereby, overruled, with leave to the defendant to answer within the usual time.

In the district court of the United States for the northern district of California.

CHARLES R. ALLEN, PLAINTIFF,
vs. }
THE UNITED STATES, DEFENDANT.

Now comes the defendant, The United States, by its attorney, Charles A. Garter, esq., United States attorney for the northern district of California, and for answer to the plaintiff's complaint and petition on file herein, avers:

That the defendant has no information or belief upon the subject sufficient to enable it to answer the allegation of plaintiff's complaint,
29 "That heretofore, to wit: On the 5th day of February, 1891, the plaintiff, then and there being the owner of certain bituminous coals heretofore imported into the United States for a foreign country, which coals had, on being imported, paid the duty provided by said act of Congress, shipped thirty tons of said coal on the American steam vessel 'Humboldt,' a vessel of the United States, engaged in the coasting trade thereof, which coal so shipped was intended for use as fuel on board of said vessel; and this plaintiff did thereafter, on the 12th day of said February, 1891, being the owner of said coals, ship on board of said vessel 33 tons of bituminous coals, imported as aforesaid, for use on board thereof as fuel in the trade aforesaid, and that plaintiff did thereafter, on the 16th and 21st days of said February, being the owner of said coals, ship on board of said vessel the further amounts of 33½ tons and 21 tons of bituminous coals, imported as aforesaid, for use on board thereof as fuel in the trade aforesaid."

And for that reason and on that ground defendant denies that heretofore, to wit, on the 5th day of February, 1891, or at any other time or at all, the plaintiff, being then and there the owner of certain or any bituminous coals, theretofore, or at all, imported into the United States from a foreign country, which coals, or any part thereof, had, on being imported, paid the duty provided by the acts of Congress, shipped 30 tons or any number of

tons of said or any coal on the American steam vessel "Humboldt," or on any American steam vessel engaged in the coasting trade of the United States, which coal or any part thereof so shipped was
30 intended for use as fuel or otherwise on board the said vessel; and defendant denies that plaintiff did thereafter, on the 12th day of said February, 1891, or at any other time or at all, being the owner of said or any coal, ship on board of said or any vessel 33 tons or any number of tons of bituminous coals, imported as aforesaid, or at all, for use on board thereof as fuel in the trade aforesaid; denies that plaintiff did thereafter, on the 16th and 21st days of February, or at any time or at all, being the owner of said coals or any coals, ship on board of said vessel the further or any amounts of 33½ tons and 21 tons or any number of tons of bituminous coal, imported as aforesaid, for use on board thereof, as fuel or otherwise, in the trade aforesaid or in any trade.

II.

That the defendant has no information or belief upon the subject sufficient to enable it to answer the allegation of the plaintiff's complaint and petition, "That the coal landed as aforesaid on board the said 'Humboldt,' was of the actual weight hereinbefore set forth, and was thereafter consumed as fuel in said vessel, and was not, nor any part thereof, relanded in the United States," and upon that ground and for that reason defendant denies that the coal laden on board of said "Humboldt" was of the actual weight set forth in plaintiff's complaint, and was thereafter or at all actually consumed as fuel in said or any vessel, and was not, nor was any part thereof, relanded in the United States.

III.

31 Defendant denies that after filing of the entry described in plaintiff's complaint, the plaintiff became and was entitled to a certificate of drawback for the sum of 75c. per ton, or of any sum per ton, shipped as alleged in plaintiff's complaint, less one per centum on said amount; defendant further denies that the plaintiff became and was entitled to a certificate of a drawback for the sum of $93.94, or any amount, or to the payment of said or any amount.

Wherefore defendant prays that it may go hence with its costs.

(Signed) CHARLES A. GARTER,
United States Attorney.

Verification of the foregoing answer is hereby waived, and it is agreed that the same may have the same force and effect as if verified.

October 17th, 1892.

(Signed) PAGE & EELLS,
Attorneys for Petitioner and Plaintiff.

(Endorsed:) No. 1295. District court of the United States, northern district of California. Charles R. Allen vs. the United States. Answer. Filed Oct. 20th, 1892. (Signed) Southard Hoffman, clerk. By (signed) J. S. Manley, deputy clerk.

At a stated term of the district court of the United States of America for the northern district of California, held at the court room in the city of San Francisco, on Thursday, the 1st day of December, in the
32 year of our Lord, one thousand eight hundred and ninety-two. Present: the Honorable Wm. W. Morrow, judge.

CHARLES R. ALLEN
vs.
THE UNITED STATES OF AMERICA. } No. 1295.

This cause this day came on regularly for hearing, Charles Page, esq., appearing as attorney for the plaintiff, and Charles A. Shurtleff, esq., assistant United States attorney, on behalf of the United States.

The cause was submitted to the court on questions of law for consideration and decision, the facts of the complaint being admitted as true. And after due consideration had thereon, it is by the court ordered that judgment be entered in favor of Charles R. Allen, plaintiff, for the sum of eighty-seven dollars and twenty-four cents, with interest from March 20th, 1891, and for costs.

In the district court of the United States for the northern district of California.

Hon. W. W. Morrow, judge.

CHARLES R. ALLEN
vs.
THE UNITED STATES.

THURSDAY, *December* 1, 1892.

Mr. SHURTLEFF. If your honor please, this is an action brought to recover a drawback alleged to be due the plaintiff. The allegations of the complaint, I am informed by the deputy collector, are true as far
33 as he is advised. In fact, the only question involved in the case is one of law. The position of the United States is, that, admitting all the allegations of the complaint, the plaintiff has failed to state or prove a cause of action, and is therefore not entitled to judgment. A demurrer was filed by the United States which raised the question of law, and it was overruled by Judge Ross, which ruling, I presume, will be treated by your honor as the law of the case. We do not dispute the facts, but say, assuming them to be true, plaintiff is not entitled to judgment, and that judgment should be for the United States.

Judge MORROW. Judgment for plaintiff.

(Endorsed:) No. 1295. In the dis. court of the United States for the nor. dis. of California. Charles R. Allen vs. The United States. Statement of ass't district attorney on day of trial. Filed Dec. 1st, 1892. (Signed) Southard Hoffman, clerk.

In the district court of the United States for the northern district of California.

CHARLES R. ALLEN, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT.

Findings.

The above cause having come on regularly to be heard, the court now makes and files its findings of fact and law therein as follows:

34

I.

At all times herein named the plaintiff was and now is a resident of the city and county of San Francisco, State of California.

II.

Pursuant to the provisions an act of Congress of the United States, approved March 3d, 1883, entitled, "An act to reduce internal revenue taxation, and for other purposes, and the act of Congress approved June 19th, 1886, entitled an act to abolish certain fees to American vessels, and to amend the laws relative to shipping commissioners, seamen, and owners of vessels, and for other purposes," providing for the allowance and payment of a drawback on bituminous coals imported from foreign countries into the United States, and afterwards used for fuel on board of vessels of the United States propelled by steam, which are engaged in the coasting trade of the United States, or in the trade with foreign countries under such regulations as the Secretary of the Treasury of the United States shall provide, the said Secretary did on the 8th day of September, 1887, provide and promulgate certain regulations for the said allowance and payment in the case in said statute provided, a copy of which regulations is hereunto annexed and hereby referred to and made a part hereof. That said regulations have since the date thereof been the regulations applied for purposes of drawback to all coasting steam vessels and have not been revoked, but the same are still in force.

35

III.

That heretofore, to wit, on the 5th day of February, 1891, the plaintiff, then and there being the owner of certain bituminous coals theretofore imported into the United States from a foreign country, which coals had on being imported paid the duty provided by said act of Congress, shipped thirty tons of said coal on the American steam vessel "Humboldt," a vessel of the United States engaged in the coasting trade thereof, which coal so shipped was intended for use as fuel on board of said vessel; and the plaintiff did, thereafter, on the 12th day of said February, 1891, being the owner of said coals, ship on board of said vessel thirty-three tons of bituminous coals, imported as aforesaid, for use on board thereof as fuel in the trade aforesaid.

And the plaintiff did thereafter, on the 16th and 21st days of said February, being the owner of said coals, ship on board of said vessel the further amounts of thirty-three and one-half tons, and twenty-one tons of bituminous coals, imported as aforesaid, for use on board thereof as fuel in the trade aforesaid.

IV.

That at least three hours before each of the shipments aforesaid the plaintiff filed with the surveyor of customs at the port of San Francisco an application for the inspection, weighing, and lading thereof, in accordance with the terms prescribed by the said regulations of the Secretary of the Treasury, and requested that the said surveyor issue the order to the weigher of the customs department by the said regulations
36 required to be issued, in order that the said coals might be inspected and weighed and the returns thereof delivered to the collector of the port and revenue district of San Francisco, but the said surveyor then and there declined and refused to issue the said order to the weigher as required, and the same, notwithstanding the said application, was not issued, nor was said coal inspected or weighed as required by said regulations. That prior to the time the said application and each of them were made, the plaintiff had filed the bonds required by the said regulations, and the same had been accepted by the officers therewith intrusted.

V.

That within ten days after the expiration of the said month of February, 1891, the plaintiff, in accordance with said regulations, filed with the said collector an entry for drawback on the coals so shipped on said "Humboldt," setting forth the quantity taken on board under each of the applications hereinbefore described, in the form required by said regulations, and accompanied the said entry with his oath in the form set forth in said regulations, and then and there requested that a certificate of drawback on the coals so shipped during the said month on said steamship, payable twenty days thereafter as prescribed by said regulations, be issued to him; but the said officer then and there refused to issue the same or to pay the said drawback, or to recognize the right of the plaintiff thereto; and, that except in receiving the application for weighing, the said officers
refused to take any step or to do anything whatever in the matter
37 of said drawback, notwithstanding the provisions of said statutes and of said regulations in that behalf for the benefit of the plaintiff.

VI.

That the coal laden as aforesaid on board of said "Humboldt" was of the actual weights hereinbefore set forth, and was thereafter actually consumed as fuel in said vessel, and was not, nor was any part thereof, relanded in the United States.

VII.

That twenty days after the filing of the entry last described the plaintiff became and was entitled to a certificate of drawback for the sum of seventy-

five cents per ton, shipped as aforesaid, less one per centum on said amount, to wit, eighty-seven and 24-100 dollars, and to payment of the said amount.

That no part of said amount has been paid to the plaintiff, and the same is now due and owing to him.

Conclusion of law.

Upon the foregoing facts the court finds the plaintiff is entitled to judgment for the sum of eighty-seven and 24-100 dollars and costs, and it is so ordered. The opinion of the court and its conclusions of law upon the questions of law involved in the case is hereunto annexed.

Nov. , 1892.

(Signed) WM. W. MORROW, *Judge.*

38 WEBBER.

The regulations of June 6th, 1885, have been amended by Department letter of September 8th, 1887, to read as follows, and will supercede all others on the same subject:

CIRCULAR.

Drawback on bituminous coal used for fuel on tugboats, harbor and local steamers, and lighters.

, 1885.
Department No. 30.
Division of customs.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., June 6th, 1885.

To collector of customs and others:

With a view of reducing the clerical work in connection with allowances of drawback on coal taken for fuel on board tugboats, harbor and local steamers, and lighters the regulations of 1884, articles 951 to 955, both inclusive, are supplemented as follows:

In lieu of the entry form No. 270 (article 952) the owner of the coal or his agent must file with the surveyor of customs for inspections, weighing, and lading in the following form:

Form No. .

SURVEYOR OF CUSTOMS, , *Port of* , 188 :

SIR: I have to request that you will cause an official inspection, weighing, and shipment to be made of tons of bituminous coal, ex. from , to be taken for fuel on board the steamer .

, *Owner.*

39 Upon receipt of above the surveyor will issue the following order on form No. :

To the weigher, port of , 188 :

SIR: You will superintend the transfer, weighing, and lading of the coal described in the accompanying application on board the steamer , and when such weighing and lading are completed make due return to that effect.

, *Surveyor.*

If the coal is laden on board the steamer upon which it is to be consumed sufficiently contiguous to the importing vessel or the scales at which it was weighed for the weigher to see it go on board. The return of the weigher will be in the following form:

Form No. .
Port of , 188 .

This certifies that tons of the coal described in the accompanying application were weighed under my direction and supervision on above date. Tons ex. , tons ex. , &c., and that the same were laden on board the str. .

, *Weigher.*

If the coal is not laden near enough for the weigher to see it go on board he will omit that portion of the above certificate, and the fact that it was laden will be certified by an inspector.

The return of the inspector will be in the following form:

Form No. .
Port , 188 .

40 This certifies that tons of coal described in the accompanying application were laden on board the steamer under my supervision on above date.

, *Inspector.*

The number of tons in the foregoing certificate must be written out in full and not in figures. The application with the several endorsements thereon will be returned by the surveyor to the collector as soon as each shipment is completed, who, upon due entry as per form below being made, will estimate the amount of drawback and endorse upon the import entry and the six-months' bond the actual quantity of coal shipped, with the amount of drawback to be paid, or in case of withdrawal to be endorsed upon the warehouse bond.

Within ten days after the expiration of each month, the owner of the coal shipped, or his agent, must file an entry for drawback for each steam vessel, setting forth the quantity taken on board under each application in the following form:

Form No. .

Entry of bituminous coal shipped under official supervision by during the month ending , 188 , and used for fuel on board the steamer , engaged in .

When imported.	Importing vessel.	Importer.	Quantity.	Drawback.

41 I solemnly, sincerely, and truly that the coal described in the above entry application was laden for fuel on board the above-named vessel, and has not been relanded at any port or place within the United States; that the coal was imported as above specified and duties thereon paid, or secured to be paid, at this port, on entry Nos. Dated, , 188 .

, *Owner.*

to before me this day of , 188 .

, *Collector.*

The certificate of drawback on coal shipped under the foregoing regulations will be made payable twenty days after the expiration of the month in which the coal was taken on board.

The blanks of the application, order of surveyor, and the returns of the officers will be printed on one sheet of paper, using both sides.

When the entry has been filed and sworn to it will be transmitted by messenger to the debenture clerk in auditor's division.

In all cases proper bonds must be filed before any applications to ship is acted upon. The weigher will keep an account of the actual expense of weighing the coal, and will certify it to the collector of each application at time of transmission.

JOHN S. HAGER,
Collector.

Opinion.

The foregoing facts were set up in the complaint of the plaintiff
42 in his cause. A demurrer to their sufficiency to make a cause of action was interposed by the United States. The matter was fully argued before Judge Ross of the southern district of California, sitting in this district, and was decided by him. That decision, in which I concur, settled the law of the case, and I need do no more than adopt his opinion on the question raised by the demurrer, which covers the whole case, as the opinion of the court on final judgment. The opinion of the court is, therefore, as follows:

In the district court of the United States for the northern district of California.

CHARLES R. ALLEN }
vs. }
UNITED STATES. }

There is but a single question presented by the demurrer to the complaint in this case, and that is: Does the act of Congress of October 1, 1890 (26 Statutes, 600), commonly known as the McKinley bill, repeal

the provisions of the act of March 3, 1883 (22 Statutes, 511), as amended by the act of June 19, 1889 (24 Statutes, 81), granting a drawback in certain cases upon bituminous coal imported into the United States.

That portion of the act of March 3, 1883, fixing a duty on coal is found in schedule N of the act, and reads as follows:

"Coal, bituminous and shale, seventy-five cents per ton of twenty-eight bushels, eighty pounds to the bushel. A drawback of seventy-five cents per ton shall be allowed on all bituminous coal imported into the United States which is afterwards used for fuel on board of vessels
43 propelled by steam which are engaged in the coasting trade of the United States, or in the trade with foreign countries, to be allowed and paid under such regulations as the Secretary of the Treasury shall prescribe."

By section 10 of the act of June 19, 1886, it was declared:

"That the provisions of schedule N of 'An act to reduce internal revenue taxation, and for other purposes,' approved March 3, 1883, allowing a drawback on imported bituminous coal used for fuel on vessels propelled by steam, shall be construed to apply only to vessels of the United States."

That portion of schedule N of the act of October 1, 1890, entitled "An act to reduce the revenue and equalize duties on imports, and for other purposes," reads:

"Coal, bituminous and shale, seventy-five cents per ton of twenty-eight bushels, eighty pounds to the bushel; coal, slack, or slum, such as will pass through a half-inch screen, thirty cents per ton of twenty-eight bushels, eighty pounds to the bushel."

If there was nothing more in the act of October 1, 1890, upon the subject in question, there would be no difficulty in reaching the conclusion announced by the Attorney-General in an opinion given by him in answer to a similar question propounded to him by the Secretary of the Treasury, (19 Opinions of Attorney-General, 687); for, as he there says, and as was said in substance by Judge Lacombe *in re* Straus et al. (46 Federal Reporter, 522) the act of October 1, 1890, was manifestly intended as a complete revision of the tariff laws, and therefore the law upon the sub-
44 ject in hand is to be ascertained by reference to the terms and provisions of that act. And the omission from that portion of Schedule N of the act of October 1, 1890, imposing a duty of seventy-five cents a ton on bituminous coal, of the drawback clause in relation to such coal contained in the act of March 3, 1883, as amended by section 10 of the act of June 19, 1886, would, in the absence of any other, or further provision upon the subject, clearly manifest the intention of Congress to abolish such drawback. But the act of October 1, 1890, declares in section 25 "that where imported materials on which duties have been paid are used in the manufacture of articles manufactured or produced in the United States there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less one per centum of such duties: Provided, that when the articles exported are made in part from domestic materials, the imported materials, or the parts of the articles made from such materials, shall so appear in the completed articles that the quantity or measurement thereof may be ascertained. And, provided further, that the drawback on any article allowed

under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of custom duties when exported shall, in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either, or to the person to whom such manufacturer, producer, exporter, or agent shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe."

It is upon the true construction of this section that the decision in the present case, in my opinion, hinges.

It is urged on the part of the Government that section 25 deals exclusively with drawbacks upon exports, and that the word "article" in the second proviso "means and refers to an exported article and to no other." An analysis of the section does not sustain the contention. The section provides in distinct terms for a drawback; first, on all articles wholly manufactured from imported materials and thereafter exported; second, for a drawback on all articles made partly from imported materials and thereafter exported. This language, as said by plaintiff's counsel, covers every possible manufacture made in this country, whether wholly or partially only of foreign materials, and thereafter exported. These provisions are followed by the proviso that the drawback allowed "under existing law on any article shall be continued at the rate herein provided;" that is to say, the amount returned shall be that of the duty paid, less one per centum. There could be no clearer recognition than is here expressed of the fact that there were at the time of the passage of the act of October 1, 1890, existing laws providing for drawbacks. Among them, as has been seen, was the act of March 3, 1883, as amended by that of June 19, 1886, giving a drawback on bituminous coal imported into this country and used on steam vessels of the United States. This drawback was, therefore, by the express language of the second proviso of section 25 of the act of October 1, 1890, continued, but at the rate provided in that section, to wit, the amount of duty paid, less one per centum. This, it seems to me, is the natural and ordinary meaning of plain language. There is not only no authority in the court to interject by construction the word "exported," as the attorney for the Government contends should be done, before the word "article" in the proviso in question, but it would in effect be so to construe that proviso as to make it apply to drawbacks on exported articles specifically provided for in the preceding clauses of the section; that is to say, to drawbacks on articles manufactured in this country, wholly or partially of foreign materials, and thereafter exported. The court is not at liberty to say that Congress meant by the words embodied in the proviso in question to provide for the same drawbacks it had immediately before made specific provision for; nor is it at liberty to hold that the legislature in declaring "that the drawback on any article allowed under existing law shall be continued at the rate" specified in the section, did not mean what its language naturally and plainly imports. It is true

that ordinarily the office of a proviso is to restrain or qualify some preceding matter, and will be so restricted in the absence of anything in its terms, or in the subject it deals with, indicating an intention to give it other and broader effect; but where, as in the present case, to restrict it to the matter preceding it would, as has been shown, make it
47 mean precisely the same thing as the clause to which it is appended, the language employed should be given the natural and ordinary meaning it conveys as an independent clause. "Like everything else, interpretation has its limits, beyond which it can not legitimately go. Where the legislative meaning is plain, there is not only no occasion for rules to aid the interpretation, but it is contrary to the rules to employ them. The judges have simply to enforce the statute according to its obvious terms." (Bishop on the Written Laws, section 72. Thornley vs. U. S., 113 U. S., 313.)

The laws existing at the time of the passage of the act of October 1, 1890, allowing drawbacks, were not uniform. In some cases, the drawback was fixed at the amount of duties paid, less ten per cent; in others, the deduction was one per cent; and by the act of March 3, 1883, the full amount of duty paid on bituminous coal was allowed as a drawback. (Revised Statutes, sections 3017, 3026. 18 Statutes, 340. 23 Statutes, 57.)

By the second proviso of section 25 of the act of October 1, 1890, the amount of drawback allowed is placed on all articles at a uniform rate, within certain exceptions especially provided for elsewhere in the act, as, for example, in paragraph 322 (26 Statutes, 588) in relation to salt.

The provision of the act of March 3, 1883, in regard to that article, was as follows: "Salt in bags, sacks, barrels, or other packages, twelve cents per one hundred pounds; in bulk, eight cents per one hundred pounds. Provided that exporters of meats, whether packed or smoked, which have been cured in the United States with imported salt, shall,
48 upon satisfactory proof, under such regulations as the Secretary of the Treasury shall prescribe, that such meats have been cured with imported salt, have refunded to them from the Treasury the duties paid on the salt so used in curing such exported meats in amounts not less than one hundred dollars. And provided further, that imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries and in curing fish on the shores of the navigable waters of the United States, under such regulations as the Secretary of the Treasury shall prescribe; and upon proof that the salt has been used for either of the purposes stated in this proviso the duties on the same shall be remitted." (22 Statutes, 514.)

By the act of October 1, 1890, the order of the enactment is somewhat changed, but it is in substance the same, and is as follows: "Salt in bags, sacks, barrels, or other packages, twelve cents per one hundred pounds; in bulk, eight cents per one hundred pounds. Provided that imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries and in curing fish on the shores of the navigable waters of the United States, under such regulations as the Secretary of the Treasury shall prescribe; and upon proof that the salt has been used for either of the purposes stated in this proviso the duties on the same shall be remitted. Provided further, that exporters of meats, whether packed or smoked,

which have been cured in the United States with imported salt, shall, upon satisfactory proof, under such regulations as the Secretary of the Treasury shall prescribe, that such meats have been cured with imported salt, have refunded to them from the Treasury the duties paid on the salt so used in curing such exported meats, in amounts not less than one hundred dollars." (26 Statutes, 588.)

This is cited on the part of the Government as illustrative of the method adopted and pursued by Congress in the act of October 1, 1890, when providing for the retention of existing drawback rights in respect to imported articles passing into home consumption and not thereafter exported. The answer to this is, that the case of the use of imported salt from a bonded warehouse in curing fish not exported, as permitted by the first provision of the above-cited paragraph of the act of 1890, there is a remission of duties, not the allowance of a drawback, which latter necessarily implies the former payment of duty. And in the case of the drawback permitted by the second provision of the paragraph on imported salt used in curing meats afterwards exported, the provision is that there shall be refunded from the Treasury the duties paid on the salt so used in curing such exported meats, in amounts not less than one hundred dollars. It is manifest that these provisions could not be brought within the general language employed in the second proviso of section 25 of the act declaring that drawbacks allowed "under existing law on any article shall be continued at the rate herein provided;" that is to say, the amount returned shall be that of the duty paid, less one per centum, and therefore a special provision in relation to salt became a necessity.

(Endorsed:) No. 1295. United States district court, northern district of California. Charles R. Allen vs. The United States. Findings of fact and conclusions of law and opinion. Filed December 1st, 1892. (Signed) Southard Hoffman, clerk. By (signed) J. S. Manley, deputy clerk.

In the district court of the United States for the northern district of California.

CHARLES R. ALLEN, PLAINTIFF,
vs.
THE UNITED STATES OF AMERICA, DEFENDANT. } No. 1295.

This cause, on this 1st day of December, A. D. 1892, having been regularly brought to trial upon the pleadings and proofs, and due deliberation having been had therein, and the court having filed its opinion in the cause, setting forth its specific findings of the facts therein and its conclusions upon all questions of law involved therein, and rendered judgment thereon in favor of the plaintiff, it is now ordered and adjudged that the plaintiff in this cause, Charles R. Allen, do have and recover from the defendant therein, the United States, the sum of eighty-seven and 24-100 dollars ($87.24), with interest thereon from March 29th, 1891, and his costs.

(Signed) WM. W. MORROW,
U. S. District Judge.

DECEMBER 1ST, 1892.

(Endorsed:) No. 1295. U. S. district court, northern district
51 of California. Charles R. Allen vs. The United States. Judgment. Filed December 1st, 1892. (Signed) Southard Hoffman, clerk. By J. S. Manley, deputy clerk. Ent. in bks. "Judgment and decrees," Vol. III, page 116.

District court of the United States, northern district of California.

CHARLES R. ALLEN }
vs. } No. 1275.
THE UNITED STATES. }

Clerk's costs.

1891.		Plff.	Deft.
April 6.	Filed complaint, .20	.20	
	Iss'd two certified copies of complaint, 14 fos.	2.80	
	Clerk's certificate to copies, .60; seal of court to copies, .80	1.40	
	Filed affd't of service of complaint	.20	
June 2.	Filed stipulation extending time to plead		.20
17.	Demurrer		.20
Aug. 6.	Order hearing on dem. set, etc	.30	
19.	Hearing on dem., 1 fo		.30
1892.			
Sept. 29.	Filed opinion on dem., .20; express charges, .25		.45
	Order dem. overruled and deft. allowed time to ans'r		.30
Oct. 8.	Order deft. allowed further time to ans'r.		.20
52 Oct. 20.	Filed answer		.20
Nov. 28.	Order trial set for Dec. 1	.30	
Dec. 1.	Hearing, 1 fo., .30; sub. order judgt. for plff., .30	.60	
	Filed findings, etc	.20	
	Filed judgment, .20; ext. same, 2 fos., .60	.80	
	Filed clerk's bill of costs	.20	
	Made and filed judgt. record	1.70	
	Dockets and indices	6.00	
		$14.70	$1.95

Costs taxed at $16.65.

SOUTHARD HOFFMAN, *Clerk.*

(Endorsed:) Filed Dec. 1st, 1892. Southard Hoffman, clerk.

In the district court of the United States in and for the northern district of California.

CHARLES R. ALLEN, PLAINTIFF, }
vs. }
THE UNITED STATES, DEFENDANT. }

Bill of exceptions.

This cause came on regularly for trial on the 1st day of December, 1892, before the court, sitting without a jury; a jury having been waived by the parties, and the following proceedings then and there occurred:

"Mr. SHURTLEFF: If your honor please, this is an action brought
53 to recover a drawback alleged to be due the plaintiff. The allega-

tions of the complaint, I am informed by the deputy collector, are true as far he is advised. In fact, the only real question involved in the case is one of law. The position of the United States, that admitting all the allegations of the complaint, the plaintiff has failed to state or prove a cause of action, and is therefore not entitled to judgment. A demurrer was filed by the United States, which raised the question of law, and it was overruled by Judge Ross, which ruling, I presume, will be treated by your honor as the law of the case. We do not dispute the facts, but say, assuming them to be true, plaintiff is not entitled to judgment, and the judgment should be for the United States.

Judge MORROW: Judgment for plaintiff."

And the defendant, the United States, now excepts to said decision and judgment on the ground that the same is against law.

CHARLES A. GARTER,
United States Attorney, and Attorney for Defendant.

It is hereby stipulated and agreed that the foregoing bill of exceptions is correct, and that it may be settled and allowed and stands us, and be, the bill of exceptions in this cause, and that it may be signed and allowed by the court and filed, as of December 1st, 1892. And we hereby waive any and all objections which we may have by reason of said bill of exceptions not having been settled and filed and allowed during the term in which said cause was tried.

PAGE & EELLS,
Attorneys for Plaintiff.
CHARLES A. GARTER,
United States Attorney, and Attorney for Defendant.

54 The foregoing bill of exceptions is hereby settled and allowed as of the 1st day of December, 1892, and it is hereby ordered that it be filed as of December 1st, 1892.

Feb. 10th, 1893.

WM. W. MORROW, *Judge.*

(Endorsed:) Filed this 10th day of February, 1893, nunc pro tunc as of the 1st day of December, 1892. Southard Hoffman, clerk. By J. S. Manley, deputy clerk.

In the district court of the United States in and for the northern district of California.

CHARLES R. ALLEN, PLAINTIFF,
vs.
THE UNITED STATES, DEFENDANT.

Petition for writ of error.

The above-named defendant, The United States of America, conceiving itself aggrieved by the decision and judgment of this honorable court entered in this cause on the first day of December, 1892, doth through and by Charles A. Garter, esq., United States attorney, respectfully petition and pray for the allowance of a writ of error from said decision and judg-

ment to the United States circuit court of appeals in and for the ninth judicial circuit, in order that said judgment and decision may be reviewed by said last-mentioned court, and prays that a transcript and record of the proceedings in the cause duly authenticated may be transmitted to
55 said court of appeals. Your petitioner and appellant herewith presents and files with the clerk of this honorable court its "assignment of errors."

CHARLES A. GARTER,
United States Attorney, and Attorney for Petitioner for Appellant.

It is ordered that the prayer of said petition be allowed and that the said writ of error issue as prayed for.

Dated February 11, 1893.

WM. W. MORROW, *Judge.*

(Endorsed:) Filed February 11th, 1893. Southard Hoffman, clerk. By J. S. Manley, deputy clerk.

In the district court of the United States in and for the northern district of California.

CHARLES R. ALLEN, PLAINTIFF, }
vs.
THE UNITED STATES, DEFENDANT. }

Assignment of errors.

Now comes the United States, the plaintiff in error, by its attorney, Charles A. Garter, esq., United States attorney, and upon the record and proceedings in this cause assigns the following errors, to wit:

First. That the court erred in its decision and judgment overruling the demurrer of the defendant and plaintiff in error to the petition and complaint filed in this cause.

56 Second. That the court erred in finding that the plaintiff in this cause is or was entitled to judgment against the defendant and plaintiff in error for the sum of eighty-seven and 24-100 dollars and costs, or for any sum or costs whatever.

Third. That the court erred in giving and rendering judgment in favor of plaintiff in error, and in not giving and rendering judgment for defendant and plaintiff in error.

Fourth. That the complaint and petition herein does not state facts sufficient to constitute a cause of action.

Fifth. That the decision and judgment given, rendered, and entered in this case is against law.

CHARLES A. GARTER,
United States Attorney, and Attorney for Defendant.

(Endorsed:) Filed February 11th, 1893. Southard Hoffman, clerk. By J. S. Manley, deputy clerk.

UNITED STATES OF AMERICA, ss.

The President of the United States to the honorable the judge of the district court of the United States for the northern district of California, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, or some of you, between Charles R. Allen, plaintiff, and The United States, defendant, a manifest error hath happened, to the great damage of the said United States of America, plaintiff, as by its complaint appears. We, being willing that error, if any hath been, should
57 be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the ninth circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, on the fifteenth day of March next, in the said circuit court of appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 13th day of February, in the year of our Lord one thousand eight hundred and ninety-three.

[SEAL.] F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Approved by Wm. W. Morrow, district judge.

(Endorsed:) Filed February 13th, 1893. Southard Hoffman, clerk. By J. S. Manley, deputy clerk.

UNITED STATES OF AMERICA, ss.

The President of the United States to Charles R. Allen, greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the ninth circuit, to be holden at the city of
58 San Francisco, in the State of California, on the 15th day of March next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the northern district of California, in that certain action wherein you are plaintiff and The United States is defendant, to show cause, if any there be, why the judgment rendered against the said United States as in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the honorable William W. Morrow, of the United States district court for the northern district of California, this 13th day of February, A. D. 1893.

WM. W. MORROW,
United States District Judge, Northern District of California.

I hereby certify that on the 13th day of Feb., 1893, I personally served a copy of the within citation upon Chas. Page, att'y for plaintiff in the within-entitled action, by delivering to and leaving with said Chas. Page, a copy of said citation at San Francisco, in this district.

W. G. LONG,
U. S. Marshal, Northern Dist. of Cal.,
By J. T. GREY,
Deputy.

(Endorsed:) Filed Febry. 14th, 1893. Southard Hoffman, clerk.

59 District court of the United States, northern district of California.

CHARLES R. ALLEN }
vs. } No. 1295.
THE UNITED STATES. }

Clerk's accruing costs.

1893.

Feb. 10.	Filed bill of exceptions nunc pro tunc as of Dec. 1st, 1892	.20
	Filed order settling and allowing bill of exceptions	.20
11.	Filed assignment of errors	.20
	Filed petition for writ of error	.20
	Filed order allowing writ of error	.20
13.	Filed writ of error	.20
14.	Filed citation on appeal	.20
	Making transcript on appeal, 142 fols., at 20c	28.40
	Certificate and seal to transcript	.70
	Making copy of transcript for printer, 142 fols., at 10c.	14.20
	Filed receipt of U. S. att'y for transcript	.20
	Filed clerk's accruing bill of costs	.20
		$45.10

Clerk's accruing costs taxed at $45.10.

SOUTHARD HOFFMAN, *Clerk.*

(Endorsed:) Filed February 18th, 1893. Southard Hoffman, clerk.

60 UNITED STATES OF AMERICA,
Northern District of California, ss:

I, Southard Hoffman, clerk of the district court of the United States for the northern district of California, do hereby certify that the foregoing sixty-three (63) pages, numbered from one (1) to sixty-three (63), inclusive, are a true copy of the record and of all proceedings in the cause mentioned in the annexed writ of error, and that the same constitute the return to said writ.

In witness whereof, I have hereunto set my hand and caused the seal of said court to be affixed at San Francisco, this 20th day of February, A. D. 1893.

[SEAL.] SOUTHARD HOFFMAN, *Clerk.*

(Endorsed:) No. 101. U. S. circuit court of appeals for the ninth circuit. Transcript of record. Filed February 20, 1893. F. D. Monckton, clerk.

61 In the United States circuit court of appeals for the ninth circuit.

THE UNITED STATES, PLAINTIFFS IN ERROR,
vs.
CHARLES R. ALLEN, DEFENDANT IN ERROR. } No. 101.

In error to the district court of the United States for the northern district of California.

Charles A. Shurtleff, asst. U. S. attorney, for plaintiffs in error; Charles Page, for defendant in error.

Before McKenna and Gilbert, circuit judges, and Hawley, district judge.

62 By the court, Hawley, J.:

On the 6th of April, 1891, Charles R. Allen (appellee herein) brought this action to recover from the United States (appellant herein) the sum of 893.94, alleged to be due him as drawback under the provisions of the act of Congress of March 3, 1883 (22 U. S. Stat., 511), as amended by the act of June 19, 1886 (24 U. S. Stat., 81), on certain bituminous coal by him imported into the United States and subsequently consumed as fuel on the "Humboldt," a steam vessel of the United States engaged in the coasting trade of this country.

There is no controversy as to the facts. The merits of the case are to be disposed of by determining the legal question whether or not the right of drawback given by the statutes above mentioned is repealed by the act of Congress of October 1, 1890 (26 U. S. Stat., 600), commonly known as the McKinley bill. To intelligently present this question it will be proper to refer to certain portions of the statutes which are necessary to be considered in order to arrive at a correct construction of the act. We quote (1) that portion of Schedule N, of the act of March 3, 1883, which reads as follows: "Coal, bituminous and shale, seventy-five cents per ton of twenty-eight bushels, eighty pounds to the bushel, a drawback of seventy-five cents per ton shall be allowed on all bituminous coal imported into the United States, which is afterwards used for fuel on board of vessels propelled by steam which are engaged in the coasting trade of the United States, or in the trade with foreign countries, to be allowed
63 and paid under such regulations as to the Secretary of the Treasury shall prescribe."

(2) Section 10 of the act of June 19, 1886, declares: "That the provisions of Schedule N of 'An act to reduce internal-revenue taxation, and for other purposes,' approved March 3, 1883, allowing a drawback on imported bituminous coal used for fuel on vessels propelled by steam shall be construed to apply only to vessels of the United States."

(3) That portion of Schedule N of the act of October 1, 1890, which reads as follows:

"Coal, bituminous and shale, seventy-five cents per ton of twenty-eight bushels, eighty pounds to the bushel; coal slack or culm such as will pass through a half-inch screen, thirty cents per ton of twenty-eight bushels, eighty pounds to the bushel."

(4) Section 25 of the act of October 1, 1890, which declares: "That where imported materials on which duties have been paid are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less one per centum of such duties; provided, that when the articles exported are made in part from domestic materials, the imported materials, or the parts of the articles made from such materials, shall so appear in the completed articles that the quantity or measurement thereof may be ascertained; and, provided further, that the drawback on any article allowed under existing law shall be continued at the rate herein provided. That the
64 imported materials used in the manufacture or production of articles entitled to drawback of custom duties when exported shall, in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either, or to the person to whom such manufacturer, producer, exporter, or agent, shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe."

The act of October 1, 1890, was evidently intended to be a complete revision of the tariff laws. As was said in re Strauss: "It manifests a plain intention to substitute that tariff act in the place and stead of all prior tariff legislation, so far, at least, as such legislation lays a duty upon imported articles of any kind." (46 Fed. Rep., 522; letter of Attorney-General; 19 Op. Atty. Gen., 687.) It will be observed, however, that the act does not in direct terms repeal the drawback on coal. The question is whether the prior acts allowing this drawback are repealed by the clause in section 55, "that all laws and parts of laws inconsistent with this act are hereby repealed."

It will be conceded as claimed by appellant, that the omission from that portion of Schedule N, of the act of October 1, 1890, imposing a duty of seventy-five cents a ton on bituminous coal, of the drawback clause
65 in relation to such coal contained in the act of March 3, 1883, as amended by the act of June 19, 1886, of itself indicates the intention of Congress to abolish such drawback and, if there were no other provisions in relation to this matter, would be conclusive upon the subject. But it is apparent that the question is not solved by a reference only to that portion of Schedule N. The true meaning and intent of the act can not be ascertained without a careful consideration of the provision of section 25.

What does this section mean? What was the intention of Congress in inserting the second proviso, "That the drawback on any article allowed under existing law shall be continued at the rate herein provided?" Does this section in its entirety deal exclusively with drawbacks upon exports?

Is the word "article" as used in the second proviso to be construed as applying only to an exported article?

In answer to these questions, we adopt the views expressed by Judge Ross in overruling the demurrer interposed by the United States, as follows:

"It is urged on the part of the Government that section 25 deals exclusively with drawbacks upon exports, and that the word article in the second proviso means and refers to an exported article and no other. An analysis of the section does not sustain the contention. The section provides in distinct terms for a drawback, first, on all articles wholly manufactured from imported materials and thereafter exported; second, for a drawback on all articles made partly from imported materials and thereafter exported. This language, as said by plaintiffs' counsel, covers every possible manu-
66 facture made in this country, whether wholly, or partially only, of foreign materials, and thereafter exported. These provisions are followed by the proviso that the drawback allowed "under existing law on any article shall be continued at the rate herein provided;" that is to say, the amount returned shall be that of the duty paid, less one per centum. There could be no clearer recognition than is here expressed of the fact that there were at the time of the passage of the act of October 1, 1890, existing laws providing for drawbacks. Among them, as has been seen, was the act of March 3, 1883, as amended by that of June 19, 1886, giving a drawback on bituminous coal imported into this country and used on steam vessels of the United States. This drawback was, therefore, by the express language of the second proviso of section 25 of the act of October 1, 1890, continued, but at the rate provided in that section, to wit: The amount of duty paid, less than one per centum. This, it seems to me, is the natural and ordinary meaning of plain language. There is not only no authority in the court to interject by construction the word "exported" as the attorney for the Government contends should be done before the word "article" in the proviso in question, but it would in effect be so to construe that proviso as to make it apply to drawbacks on exported articles specifically provided for in the preceding clauses of the section; that is to say, the drawbacks on articles manufactured in this country wholly or partially of foreign materials and thereafter exported, the court is not at liberty to say that Congress meant by the word embodied in the proviso in question to provide for the same
67 drawbacks it had immediately before made specific provision for; nor is it at liberty to hold that the legislature in declaring "that the drawback on any article allowed under existing law shall be continued at the rate" specified in the section, did not mean what its language naturally and plainly imports. It is true that ordinarily the office of a proviso is to restrain or qualify some preceding matter and will be so restricted in the absence of anything in its term, or in the subject it deals with, indicating an intention to give it other and broader effect; but where, as in the present case, to restrict it to the matter preceding it would, as has been shown, make it mean precisely the same thing as the clause to which it is appended, the language employed should be given the natural and ordinary meaning it conveys as an independent clause. "Like everything else, interpretation has its limits, beyond which it can not legitimately go. Where the legislative meaning is plain, there is not only no occasion for rules to aid the interpretation, but it is contrary to the rules to employ

them. The judges have simply to enforce the statute according to its obvious terms." (Bishop on the Written Laws, section 72; Thorneley vs. U. S., 113 U. S., 313.)

The laws existing at the time of the passage of the act of October 1, 1890, allowing drawbacks, were not uniform. In some cases a drawback was fixed at the amount of duties paid, less ten per cent; in others, the deduction was one per cent. And by the act of March 3, 1883, the full amount of duty paid on bituminous coal was allowed as a drawback. (Revised Statutes, sections 3017, 3026; 18 Statutes, 340; 23 Statutes, 57.)

68 By the second proviso of section 25 of the act of October 1, 1890, the amount of drawback allowed is placed on all articles at a uniform rate, with certain exceptions specially provided for elsewhere in the act, as, for example, in paragraph 322 (26 Statutes, 588), in relation to salt.

The provision of the act of March 3, 1883, in regard to that article was as follows: "Salt in bags, sacks, barrels, or other packages, twelve cents per one hundred pounds; in bulk, eight cents per one hundred pounds: Provided, That exporters of meats, whether packed or smoked, which have been cured in the United States with imported salt, shall, upon satisfactory proof, under such regulations as the Secretary of the Treasury shall prescribe, that such meats have been cured with imported salt, have refunded to them from the Treasury the duties paid on the salt so used in curing such exported meats, in amounts not less than one hundred dollars: And provided further, That imported salt in bond may be used in curing fish taken by vessels licensed to engaged in the fisheries and in curing fish on the shores of the navigable waters of the United States, under such regulations as the Secretary of the Treasury may prescribe; and upon proof that the salt has been used for either of the purposes stated in this proviso, the duties on the same shall be remitted."

(22 Statutes, 514.)

By the Act of October 1, 1890, the order of the enactment is somewhat changed, but it is in substance the same, and is as follows: "Salt in bags, sacks, barrels, or other packages, twelve cents per hundred pounds; in bulk,

69 eight cents per hundred pounds: Provided, That imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries and in curing fish on the shores of the navigable waters of the United States, under such regulations as the Secretary of the Treasury shall prescribe; and upon proof that the salt has been used for either of the purposes stated in this proviso, the duties on the same shall be remitted: Provided further, That exporters of meats, whether packed or smoked, which have been cured in the United States, with imported salt, shall, upon satisfactory proof, under such regulations as the Secretary of the Treasury shall prescribe, that such meats have been cured with imported salt, have refunded to them from the Treasury the duties paid on the salt so used in curing such exported meats, in amounts not less than one hundred dollars."

(26 Statutes, 588.)

This is cited on the part of the Government as illustrative of the method adopted and pursued by the Congress in the act of October 1, 1890, when providing for the retention of existing drawback, writes in respect to

imported articles passing into home consumption and not thereafter exported. The answer to this is that in the case of the use of imported salt from a bonded warehouse in curing fish not exported, as permitted by the first provisions of the above-cited paragraph of the act of 1890, there is a remission of duties, not the allowance of a drawback, which latter necessarily implies the former payment of duties. And in the case of the drawback permitted by the second provision of the paragraph on imported salt used in curing meats afterwards exported, the provision is that
70 there shall be refunded from the Treasury the duties paid on the salt so used in curing such exported meats, in amounts not less than one hundred dollars. It is manifest that these provisions could not be brought within the general language employed in the second proviso of section 25 of the act declaring that drawback is allowed, "under existing law on any article shall be continued at the rate herein provided;" that is to say, the amount returned shall be that of the duty paid, less one per centum, and therefore a special provision in relation to salt became a necessity.

The judgment of the district court is affirmed.

(Endorsed:) No. 101. U. S. circuit court of appeals for the ninth circuit. The United States, plaintiffs in error, vs. Charles R. Allen. Opinion filed Nov. 14, 1893. F. D. Monckton, clerk.

71 United States circuit court of appeals for the ninth circuit.

No. 101, October term, 1892.

THE UNITED STATES, PLAINTIFFS IN ERROR,
vs.
CHARLES R. ALLEN.

In error to the district court of the United States for the northern district of California.

This cause came on to be heard on the transcript of the record from the district court of the United States for the northern district of California, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court, that the judgment of the said district court in this cause be, and the same is hereby, affirmed, and the cause is remanded to said district court for such further proceedings as may be necessary in accordance with the opinion of this court.

(Endorsed:) Judgment. Filed Nov. 14, 1893. F. D. Monckton, clerk.

72 In the United States circuit court of appeals for the ninth circuit.

THE UNITED STATES, PLAINTIFFS IN ERROR,
vs.
CHARLES R. ALLEN.
No. 101.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing to be full,

true, and correct copies of the printed transcript of the record, and the opinion and judgment of our said circuit court of appeals, in the above-entitled cause, as the originals thereof remain of record in my office.

I further certify that the same together constitute the entire record in said cause.

Attest my hand and the seal of said United States circuit court of appeals at San Francisco, this 23rd day of January, A. D. 1894.

[SEAL.] F. D. MONCKTON, *Clerk.*

73 (Indorsement on cover:) Case No. 15519. Term No. 1135. U. S. circuit court of appeals, ninth circuit. The United States, plaintiff in error, vs. Charles R. Allen. Filed March 5, 1894. Return filed April 17, 1894.

IN THE

Supreme Court of the United States.

October Term, 1895.

THE UNITED STATES,
Plaintiff in Error,

vs.

CHARLES R. ALLEN,
Defendant in Error.

No. 337.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS, NINTH CIRCUIT.

MOTION TO ADVANCE.

PAGE & EELLS,
Attorneys for Defendant in Error.

L. E. PAYSON,
of Counsel.

BYRON S. ADAMS, PRINTER.

IN THE

Supreme Court of the United States.

October Term, 1895.

THE UNITED STATES,
Plaintiff in Error,

vs.

CHARLES R. ALLEN,
Defendant in Error.

No. 337.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS, NINTH CIRCUIT.

MOTION TO ADVANCE.

This record presents a single question only, viz., whether the drawback of such duties, given by paragraph 416 of the Tariff Act of 1883, was repealed by the Tariff Act of 1890, and especially as to duties paid upon bituminous coal used as fuel by steam vessels under American registry, owned by citizens of the United States.

The Treasury Department holds that the owners are not entitled to the drawback, and this suit was brought by Defendant in Error to recover it, he being the owner of and

operating such vessel, using imported bituminous coal for steam making.

The District Court and the Circuit Court of Appeals decided that he was entitled to the drawback.

This application is made because of the great importance of the question to the mercantile steam-shipping of the United States, especially in California, where most of the coal for vessel fuel is imported.

The chief item of expense in steam navigation is that of fuel, and in the close competition of transportation companies, especially in the foreign trade, the matter of tariff duty is serious.

The question is a simple one; will take but little time for its disposal by this Court, and it is of great importance to the general shipping interests of the Union, that it be disposed of during the present term of Court before the spring adjournment.

Wherefore, Defendant in Error respectfully moves the court to advance the case on the docket, and assign it for hearing in March, say—

FIRST, Because the question is of general public interest;
SECOND, Because the decision in this case will be a construction of a general law of Congress applicable to very large business interests as shown by the affidavit on file.

Notice of this motion has been duly served upon the Solicitor-General, proof of which is filed with the clerk.

It may not be improper to state that the Solicitor-General is not resisting this motion.

PAGE & EELLS,
Attorneys for Defendant in Error.

L. E. PAYSON,
of Counsel.

IN THE

Supreme Court of the United States.

THE UNITED STATES,
Plaintiff in Error,

vs.

CHARLES R. ALLEN,
Defendant in Error.

UNITED STATES OF AMERICA,
Northern District of California. } *ss:*

CHARLES R. ALLEN, being duly sworn, deposes and says: I am the defendant in error in the above-entitled cause. The said action was instituted by me in the District Court of the United States of this District, to recover the amount of drawback of duties due to me, as I was advised and claimed, upon bituminous coals imported by me and used, after importation, as fuel by steam vessels of the United States.

The only question involved in the case was whether the drawback of such duties given by the provisions of paragraph 416 of the Tariff Act of 1883, were repealed by the enactment of the General Tariff Law of 1890. The District Court and, on appeal, the Circuit Court of Appeals, decided that the right of drawback given by the Act of 1883 was expressly preserved by Section 25 of the said Act of 1890, which provided in words that any drawback given by exist-

ing law shall be continued at the rate in said Act of 1890 provided. The effect of these decisions was to declare the right of the importer to a drawback of duties on bituminous coals used as fuel by vessels of the United States.

The correctness of the rulings of the courts below is now before this Court for review on the application of the United States. I have requested that an application be made to advance the cause on the calendar of the Court because of its great interest and importance to the mercantile steam shipping of the United States. All steam vessels engaged either in the foreign trade, or on the sea-board of the Atlantic or Pacific States, or on the Great Lakes, which consume bituminous coals, are seriously affected in their competition with foreign steamships or (if not in the foreign trade) in their returns by the denial of the right of drawback which they had enjoyed since the passage of the Act of 1883. The chief expense incident to steam navigation is that of fuel. The cost of maintaining such vessels is seriously affected by the amount of duties which they are now obliged to pay and which should, if the decision of the Court of Appeals be right, be returned to them by way of drawback.

CHARLES R. ALLEN.

Subscribed and sworn to before me, this 17th day of December, 1895.

[SEAL.] JOHN FONGO,
Commissioner United States Circuit Court,
Northern District of California.

MAR 5 1894
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1893.

THE UNITED STATES }
vs. } 337
CHARLES R. ALLEN. }

APPLICATION FOR A WRIT OF CERTIORARI TO REVIEW A JUDGMENT OF THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

In the Supreme Court of the United States.

OCTOBER TERM, 1893.

THE UNITED STATES }
vs.
CHARLES R. ALLEN. }

APPLICATION FOR A WRIT OF CERTIORARI TO REVIEW A JUDGMENT OF THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

On behalf of the United States, the Solicitor-General respectfully prays for a writ of certiorari to require to be certified to this court for review and determination, pursuant to the provisions of section 6 of the act entitled "An Act to establish circuit courts of appeals," etc., approved March 3, 1891, the case of the *United States* v. *Charles R. Allen*, in which case, on November 14, 1893, the circuit court of appeals for the ninth circuit, by its judgment, affirmed a judgment rendered December 1, 1892, by the district court for the northern district of California, in favor of said Charles R. Allen, plaintiff, against the United States, defendant, for the sum of $87.24, with interest thereon from March 20, 1891, and costs.

The cause of action stated in the complaint was for the recovery of moneys alleged to be due to the plaintiff as

drawbacks under the Tariff Act of March 3, 1883, chapter 121, schedule N (22 Stat., 488, 511), as amended by the Act of June 19, 1886, chapter 421, section 10 (24 Stat., 79, 81), on imported bituminous coal used for fuel on board of a vessel engaged in the coasting trade of the United States, and the sole question was as to the proper construction of the Tariff Act of 1890, chapter 1244, sections 25 and 55 (26 Stat., 567, 617, 625), it being contended on behalf of the plaintiff that the right to drawbacks was preserved by section 25 of the Tariff Act of 1890, while the United States contended that the Acts of 1883 and 1886, under which the plaintiff claimed drawbacks, were repealed by section 55 of the Tariff Act of 1890.

The question is one of very great financial importance to the United States, involving, if the judgment of the circuit court of appeals is correct, the refunding of large amounts of money heretofore regarded as the unquestioned property of the Government. The construction given to the Tariff Act of 1890 by the circuit court of appeals is contrary to the opinion of Mr. Attorney-General Miller rendered to the Secretary of the Treasury November 17, 1890 (19 Opin., 687), and to the uniform construction adopted by the Treasury Department and customs officials, and is believed to be erroneous.

A certified copy of the entire record of the case in the circuit court of appeals, including its opinion, is filed as a part of this application, and a copy of the opinion of Mr. Attorney-General Miller is appended hereto.

LAWRENCE MAXWELL, Jr.,
Solicitor-General.

DEPARTMENT OF JUSTICE,
November 17, 1890.

SIR: I have the honor to acknowledge the receipt of your communication of the 4th instant, requesting an opinion whether the provision for drawback upon bituminous coal (22 Stat., 511) is repealed by section 55 of the Act of October, 1, 1890, entitled "An Act to reduce the revenue and equalize duties on imports and for other purposes."

A brief review of the legislation on this subject discloses the following facts:

Section 2504, schedule M, sundries (Rev. Stat., 1874, p. 474), provides a duty upon imported coal in the following language: "Slack coal or culm, such as will pass through a half-inch screen, forty cents per ton of twenty-eight bushels, eighty pounds to the bushel; bituminous coal, and shale, seventy-five cents per ton of twenty-eight bushels, eighty pounds to the bushel."

In the revision of the Tariff Act of March 3, 1883 (22 Stat., 511), section 2502, Schedule N, sundries, a drawback was provided upon bituminous coal. As found in the Revised Statutes the provisions both for "slack coal or culm," and "bituminous coal," are provided for in a *single* paragraph. In the law of March 3, 1883, *supra*, the provision for duty upon coal, slack or culm, and bituminous, are *separated*, each having its appropriate paragraph. The duty upon bituminous coal is thus provided: "Coal, bituminous and shale, seventy-five cents per ton of twenty-eight bushels, eighty pounds to the bushel. A drawback of seventy-five cents per ton shall

be allowed on all bituminous coal imported into the United States which is afterwards used for fuel on board of vessels propelled by steam which are engaged in the coasting trade of the United States, or in the trade with foreign countries, to be allowed and paid under such regulations as the Secretary of the Treasury shall prescribe." To this act Congress gave a legislative construction by section 10 of an act entitled "An Act to abolish certain fees for official services to American vessels, and to amend the laws relating to shipping commissioners, seamen, and owners of vessels, and for other purposes." (24 Stat., 81). By the provisions of this last section the right to drawback was to be construed to apply "only to vessels of the United States."

The law stood thus until the passage of the Act of October 1, 1890.

It will be noted in Schedule N, "Sundries," of the last-named act, that Congress reversed the relative position of the paragraphs relating to coal, bituminous and shale, and slack or culm, making them stand as follows: "Coal, bituminous and shale, seventy-five cents per ton of twenty-eight bushels, eighty pounds to the bushel; coal, slack or culm, such as will pass through a half-inch screen, thirty cents per ton of twenty-eight bushels, eighty pounds to the bushel," and also *omitted* the provision for drawback upon bituminous coal, as found in the Act of March 3, 1883.

An examination of the Act of October 1, 1890, discloses no clause *directly repealing* this drawback, unless it be found in section 55, "that all laws and parts of laws inconsistent with this act are hereby repealed."

Evidence from the internal construction of the act, as well as the history of its enactment, leads irresistibly to the conclusion that "the tariff part of the bill contemplates and proposes a complete revision. It not only changes the rate of duty, but modifies the general provisions of law relating to the questions of duty."

It may be contended with force that the provisions of the law of 1883, contained in a separate paragraph, providing for the duty and the drawback, are to be considered and construed collectively, and that when the Act of October 1, 1890, provided for a duty and omitted the drawback that such provision is in *terms inconsistent* with the prior law, and thus repeals the former duty.

However this may be, it is settled that "if a subsequent statute be not repugnant in all its provisions to a prior one, yet if the later statute equally intends *to prescribe the only rule* which shall govern, it repeals the prior one." (*State* v. *Stoll*, 17 Wall., 425; *Daviess* v. *Fairbairn*, 3 Howard, 630; *United States* v. *Claflin*, 97 U. S., 546; *Cook County National Bank* v. *The United States*, 107 U. S., 445.)

Another rule of construction equally well settled is that a statute is impliedly repealed by a subsequent statute making new provisions plainly intended as a *substitute* for it. (*United States* v. *Henderson*, 11 Wall., 652; *Wood* v. *United States*, 16 Pet., 342; *Fabbri* v. *Murphy*, 95 U. S., 191.)

That the attention of Congress must have been called to the fact of the omission of the clause relating to drawback is evident, because the provision formed a part of

the original law, and because of the change in the relative positions of the paragraphs relating to coal, slack, or culm, and coal, bituminous and shale, referred to above.

It will be seen also that the Act of October 1, 1890, in respect to duties upon other articles concerning which drawbacks were previously allowed, retains the same provision as in the prior existing law. Thus section 25, relating to imported materials on which duties have been paid, used in the manufacture of articles manufactured or produced in the United States, provides that "the drawback on any article allowed under existing law shall be continued at the rate herein provided."

So, also, the drawback mentioned in Schedule C, metals and manufactures of iron and steel, paragraph 143, and that on salt, agricultural products, etc., paragraph 322. It can not be assumed that Congress thus deliberately omitted a clause relating to a drawback in a general revision of the subject of duties without intending so to do.

I am, therefore, of the opinion that so much of the act of March 3, 1883, Schedule N, "Sundries," as relates to the drawback upon coal, bituminous and shale, is repealed by the Act of October 1, 1890.

You will note that my opinion thus far answers the specific question asked. I deem it my duty to call your attention to section 16 of the Act of June 26, 1884, chapter 121. This section is as follows:

"SEC. 16. All articles of foreign production needed, and actually withdrawn from bonded warehouses, for supplies not including equipment of vessels of the United States engaged in the foreign trade, including the trade between

the Atlantic and Pacific ports of the United States, may be so withdrawn free from duty, under such regulations as the Secretary of the Treasury may prescribe."

It would seem to admit of little doubt that "supplies" include coal.

Very respectfully,

W. H. H. MILLER.

The SECRETARY OF THE TREASURY.

No. 1135

C. J.

Mar. 5/94

In the Supreme Court of the United States.

OCTOBER TERM, 1893.

THE UNITED STATES, PLAINTIFF IN ERROR,
v.
CHARLES R. ALLEN.

337

ON MOTION FOR WRIT OF CERTIORARI.

OPINION AND RECORD SUBSEQUENT THERETO IN THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

In the United States circuit court of appeals for the ninth circuit.

THE UNITED STATES, PLAINTIFFS IN error, *vs.* CHARLE R. ALLEN, DEFENDANT IN error.	No. 101.

In error to the district court of the United States for the northern district of California.

OPINION.

Charles A. Shurtleff, asst. U. S. attorney, for plaintiffs in error; Charles Page, for defendant in error.

Before: McKenna and Gilbert, circuit judges, and Hawley, district judge.

By the court, HAWLEY, J.:

On the 6th of April, 1891, Charles R. Allen (appellee herein) brought this action to recover from the United States (appellant herein) the sum of $93.94, alleged to be due him as drawback under the provisions of the act of Congress of March 3, 1883 (22 U. S. Stat., 511), as amended by the act of June 19, 1886 (24 U. S. Stat., 81), on certain bituminous coal by him imported into the United States and subsequently consumed as fuel on the "Humboldt," a steam vessel of the United States engaged in the coasting trade of this country.

There is no controversy as to the facts. The merits of the case are to be disposed of by determining the legal

question whether or not the right of drawback given by the statutes, above mentioned, is repealed by the act of Congress of October 1, 1890 (26 U. S. Stat., 600), commonly known as the McKinley bill. To intelligently present this question it will be proper to refer to certain portions of the statutes which are necessary to be considered in order to arrive at a correct construction of the act. We quote (1) that portion of Schedule N of the act of March 3, 1883, which reads as follows: "Coal, bituminous and shale, seventy-five cents per ton of twenty-eight bushels, eighty pounds to the bushel, a drawback of seventy-five cents per ton shall be allowed on all bituminous coal imported into the United States which is afterwards used for fuel on board of vessels propelled by steam which are engaged in the coasting trade of the United States, or in the trade with foreign countries, to be allowed and paid under such regulations as to the Secretary of the Treasury shall prescribe."

(2) Section 10 of the act of June 19, 1886, declares: "That the provisions of Schedule N of 'An act to reduce internal-revenue taxation, and for other purposes,' approved March 3, 1883, allowing a drawback on imported bituminous coal, used for fuel on vessels propelled by steam, shall be construed to apply only to vessels of the United States."

(3) That portion of Schedule N of the act of October 1, 1890, which reads as follows: "Coal, bituminous and shale, seventy-five cents per ton of twenty-eight bushels, eighty pounds to the bushel; coal, slack or culm, such as will pass through a half-inch screen, thirty cents per ton of twenty-eight bushels, eighty pounds to the bushel."

(4) Section 25 of the act of October 1, 1890, which declares, "That where imported materials on which duties have been paid, are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles a

drawback equal in amount to the duties paid on the materials used, less one per centum of such duties, *provided* that when the articles exported are made in part from domestic materials, the imported materials, or the parts of the articles made from such materials, shall so appear in the completed articles that the quantity or measurement thereof may be ascertained. And *provided further*, That the drawback on any article allowed under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of custom duties when exported, shall in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer or exporter, to the agent of either, or to the person to whom such manufacturer, producer, exporter, or agent, shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe."

The act of October 1, 1890, was evidently intended to be a comptete revision of the tariff laws. As was said in re Strauss: "It manifests a plain intention to substitute that tariff act in the place and stead of all prior tariff legislation, so far, at least, as such legislation lays a duty upon imported articles of any kind." (46 Fed. Rep., 522; letter of Attorney-General, 19 Op. Atty. Gen., 687). It will be observed, however, that the act does not in direct terms repeal the drawback on coal. The question is whether the prior acts allowing this drawback are repealed by the clause in section 55, "that all laws and parts of laws inconsistent with this act are hereby repealed."

It will be conceded as claimed by appellant, that the omission from that portion of Schedule N of the act of October 1, 1890, imposing a duty of seventy-five cents a ton on bituminous coal, of the drawback clause in relation to such coal contained in the act of March 3, 1883, as amended by the act of June 19, 1886, of itself, indidates the intention of Congress to abolish such drawback, and if there were no other provisions in relation to this matter, would be conclusive upon the subject. But it is apparent that the question is not solved by a reference only to that portion of Schedule N. The true meaning and intent of the act can not be ascertained without a careful consideration of the provisions of section 25.

What does this section mean? What was the intention of Congress in inserting the second proviso, "That the drawback on any article allowed under existing law shall be continued at the rate herein provided?" Does this section in its entirety deal exclusively with drawbacks upon exports?

Is the word "article" as used in the second proviso to be construed as applying only to an exported article?

In answer to these questions, we adopt the views expressed by Judge Ross in overruling the demurrer interposed by the United States, as follows:

"It is urged on the part of the Government that section 25 deals exclusively with drawbacks, upon exports, and that the word article in the second proviso means and refers to an exported article and no other. An analysis of the section does not sustain the contention. The section provides in distinct terms for a drawback, first, on all articles wholly manufactured from imported materials and thereafter exported; second, for a drawback on all articles made partly from imported materials and thereafter exported. This language, as said by plaintiff's counsel, covers every possible manufacture made in this country, whether wholly, or partially only, of foreign

materials and thereafter exported. These provisions are followed by the proviso that the drawback allowed "under existing law on any article shall be continued at the rate herein provided;" that is to say, the amount returned shall be that of the duty paid, less one per centum. There could be no clearer recognition than is here expressed of the fact that there were at the time of the passage of the act of October 1, 1890, existing laws providing for drawbacks. Among them, as has been seen, was the act of March 3, 1883, as amended by that of June 19, 1886, giving a drawback on bituminous coal imported into this country and used on steam vessels of the United States.

This drawback was, therefore, by the express language of the second proviso of section 25 of the act of October 1, 1890, continued, but at the rate provided in that section, to wit: The amount of duty paid, less than one per centum. This, it seems to me, is the natural and ordinary meaning of plain language. There is not only no authority in the court to interject by construction the word "exported," as the attorney for the Government contends should be done before the word "article," in the proviso in question, but it would in effect be so to construe that proviso as to make it apply to drawbacks on exported articles specifically provided for in the preceding clauses of the section; that is to say, the drawbacks on articles manufactured in this country, wholly or partially of foreign materials, and thereafter exported, the court is not at liberty to say that Congress meant by the word embodied in the proviso in question, to provide for the same drawbacks it had immediately before made specific provision for; nor is it at liberty to hold that the legislature, in declaring "that the drawback on any article allowed under existing law shall be continued at the rate" specified in the section, did not mean what its language naturally and plainly imports.

It is true that ordinarily the office of a proviso is to restrain or qualify some preceding matter and will be so restricted in the absence of anything in its terms, or in the subject it deals with, indicating an intention to give it other and broader effect; but where, as in the present case, to restrict it to the matter preceding it would, as has been shown, make it mean precisely the same thing as the clause to which it is appended, the language employed should be given the natural and ordinary meaning it conveys as an independent clause. "Like everything else, interpretation has its limits, beyond which it can not legitimately go. Where the legislative meaning is plain, there is not only no occasion for rules to aid the interpretation, but it is contrary to the rules to employ them. The judges have simply to enforce the statute according to its obvious terms." (Bishop on the Written Laws, section 72; Thorneley vs. U. S., 113 U. S., 313.)

The laws existing at the time of the passage of the act of October 1, 1890, allowing drawbacks, were not uniform. In some cases a drawback was fixed at the amount of duties paid, less ten per cent; in others, the deduction was one per cent. And by the act of March 3, 1883, the full amount of duty paid on bituminous coal was allowed as a drawback. (Revised Statutes, sections 3017, 3026; 18 Statutes, 340; 23 Statutes, 57.)

By the second proviso of section 25 of the act of October 1, 1890, the amount of drawback allowed is placed on all articles at a uniform rate, with certain exceptions specially provided for elsewhere in the act, as, for example, in paragraph 322 (26 Statutes, 588), in relation to salt.

The provision of the act of March 3, 1883, in regard to that article was as follows: "Salt in bags, sacks, barrels, or other packages, twelve cents per one hundred pounds; in bulk, eight cents per one hundred pounds. Provided, That exporters of meats, whether packed or smoked, which have been cured in the United States with

imported salt, shall, upon satisfactory proof, under such regulations as the Secretary of the Treasury shall prescribe, that such meats have been cured with imported salt, have refunded to them from the Treasury the duties paid on the salt so used in curing such exported meats, in amounts not less than one hundred dollars. And provided further, That imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries and in curiag fish on the shores of the navigable waters of the United States, under such regulations as the Secretary of Treasury may prescribe; and upon proof that the salt has been used for either of the purposes stated in this proviso the duties on the same shall be remitted. (22 Statutes, 514.)

By the act of October 1, 1890, the order of the enactment is somewhat changed, but it is in substance the same, and is as follows: "Salt in bags, sacks, barrels, or other packages, twelve cents per hundred pounds; in bulk, eight cents per hundred pounds. Provided, That imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries and in curing fish on the shores of the navigable waters of the United States, under such regulations as the Secretary of the Treasury shall prescribe; and upon proof that the salt has been used for either of the purposes stated in this proviso, the duties on the same shall be remitted. Provided, further, That exporters of meats, whether packed or smoked, which have been cured in the United States, with imported salt, shall, upon satisfactory proof, under such regulations as the Secretary of the Treasury shall prescribe, that such meats have been cured with imported salt, have refunded to them from the Treasury the duties paid on the salt so used in curing such exported meats, in amounts not less than one hundred dollars." (26 Statutes, 588.)

This is cited on the part of the Government as illustrative of the method adopted and pursued by the Congress

in the act of October 1, 1890, when providing for the retention of existing drawback, writes in respect to imported articles passing into home consumption and not thereafter exported. The answer to this is that in the case of the use of imported salt from a bonded warehouse in curing fish not exported, as permitted by the first provisions of the above-cited paragraph of the act of 1890, there is a remission of duties, not the allowance of a drawback, which latter necessarily implies the former payment of duties. And in the case of the drawback permitted by the second provision of the paragraph on imported salt used in curing meats afterwards exported, the provision is that there shall be refunded from the Treasury the duties paid on the salt so used in curing such exported meats, in amounts not less than one hundred dollars. It is manifest that these provisions could not be brought within the general language employed in the second proviso of section 25 of the act declaring that drawback is allowed "under existing law on any article shall be continued at the rate herein provided;" that is to say, the amount returned shall be that of the duty paid less one per centum, and therefore a special provision in relation to salt became a necessity.

The judgment of the district court is affirmed.

(Endorsed:) No. 101. U. S. circuit court of appeals for the ninth circuit. The United States, plaintiffs in error, vs. Charles R. Allen. Opinion. Filed Nov. 14, 1893. F. D. Monckton, clerk.

United States circuit court of appeals for the ninth circuit.

No. 101, October term, 1892.

THE UNITED STATES, PLAINTIFFS IN ERROR,
vs.
CHARLES R. ALLEN.

In error to the district court of the United States for the northern district of California.

JUDGMENT.

This cause came on to be heard on the transcript of the record from the district court of the United States for the northern district of California, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said district court in this cause be, and the same is hereby, affirmed, and the cause is remanded to said district court for such further proceedings as may be necessary in accordance with the opinion of this court.

(Endorsed:) Judgment. Filed Nov. 14, 1893. F. D. Monckton, clerk.

Endorsement: No. . United States, circuit court of appeals for the ninth circuit. October term, 189 . Judgment. Filed, , 189 . clerk.

In the United States circuit court of appeals for the ninth circuit.

THE UNITED STATES, PLAINTIFFS IN error, *vs.* CHARLES R. ALLEN.	No. 101.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing to be full, true, and correct copies of the printed transcript of the record, and the opinion and judgment of our said circuit court of appeals, in the above-entitled cause, as the originals thereof remain of record in my office.

I further certify that the same together constitute the entire record in said cause.

Attest my hand and the seal of said United States circuit court of appeals, at San Francisco, this 23rd day of January, A. D. 1894.

F. D. MONCKTON,
Clerk.

[SEAL.]

Office Supreme Court U. S.
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JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

THE UNITED STATES, PLAINTIFF IN ERROR,
v.
CHARLES R. ALLEN. } No. 337.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

THE UNITED STATES, PLAINTIFF IN ERROR,
v.
CHARLES R. ALLEN. } No. 337.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

This was an action under the Tucker Act to recover drawbacks alleged to be due to the plaintiff. As the subject of drawbacks is not within the jurisdiction of the Board of Appraisers under the Customs Administrative Act of June 10, 1890 (Syn. Dec. 14522; 21 Op., 92, 96), it remains within the jurisdiction of the Court of Claims as in *Campbell* v. *United States*, 107 U. S., 407; and therefore this action appears to be properly brought.

The question at issue is whether under the McKinley Tariff Act of 1890 a drawback is allowable upon imported coal. This question was decided in the negative by Attorney General Miller in an opinion (19 Op., 687), a copy of which is annexed to the application for a writ of

certiorari herein. The question having been decided to the contrary by the circuit court and the circuit court of appeals, that application was granted; and the matter thus comes for review before this court.

STATEMENT OF FACTS.

On February 5, 1891, Charles R. Allen, the plaintiff, being the owner of certain bituminous coal imported into the United States from a foreign country, shipped thirty tons of said coal on the American steam vessel *Humboldt*, which was engaged in the coasting trade. The coal shipped was intended for use as fuel on board the said vessel. The plaintiff paid the duty, and duly applied for a drawback of this duty under what he claims to be the correct construction of the statutes hereinafter cited. This claim being denied, he has recovered in the courts a drawback of the duties paid, less one per cent.

The facts are the same as to three subsequent lots of coal shipped by him during the same month.

DRAWBACK LEGISLATION.

Prior to 1890 the drawback legislation of the United States was to be found in main in Chapter IX of Title XXXIV of the Revised Statutes, §§ 3015–3057. There were also some special provisions as to drawbacks in subsequent laws, among which was paragraph 417 of the tariff act of March 3, 1883, which was as follows:

> Coal, bituminous, and shale, seventy-five cents per ton of twenty-eight bushels, eighty pounds to the bushel.

> A drawback of seventy-five cents per ton shall be allowed on all bituminous coal imported into the United States which is afterwards used for fuel on board of vessels propelled by steam which are engaged in the coasting trade of the United States or in the trade with foreign countries, to be allowed and paid under such regulations as the Secretary of the Treasury shall prescribe.

This clause was modified by the Shipping Act of June 19, 1886, ch. 421, § 10, by providing that it "shall be construed to apply only to vessels of the United States." The McKinley Tariff Act of October 1, 1890, dropped the drawback provision from this paragraph, which (with the next previous paragraph) appears in the new act as paragraph 432 as follows:

> Coal, bituminous, and shale, seventy-five cents per ton of twenty-eight bushels, eighty pounds to the bushel; coal slack or culm, such as will pass through a half-inch screen, thirty cents per ton of twenty-eight bushels, eighty pounds to the bushel.

If there were no further provisions on the subject, it would scarcely be seriously contested that the drawback on bituminous coal had been impliedly repealed by the McKinley Act. Defendant in error, however, contends that it has been preserved by the second proviso to § 25 of the McKinley Act, which section is as follows:

> That where imported *materials* on which duties have been paid are *used in the manufacture of articles manufactured or produced in the United States* there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid *on the materials used*, less one per centum of such duties: *Provided*, That when the articles exported are made

> in part from domestic materials, the imported materials or the parts of the articles made from such materials shall so appear in the completed articles that the quantity or measure thereof may be ascertained: *And provided further*, That the drawback on any article allowed under existing law shall be continued *at the rate herein provided*. That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported shall, in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used, and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either, or to the person to whom such manufacturer, producer, exporter, or agent shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe.

The Government contends, on the contrary, that this section, including the proviso, is applicable only to articles of domestic manufacture; that the intent and effect of the McKinley Act was to take away the drawback privileges from vessels engaged in the coasting trade, except those which round Cape Horn; and that free coal is now allowed only to vessels in the foreign trade, and to those which round Cape Horn, under the provisions of the act of June 26, 1884, ch. 121, § 16, as follows:

> All articles of foreign production needed, and actually withdrawn from bonded warehouses, for supplies not including equipment of vessels of the United

States engaged in the foreign trade, including the trade between the Atlantic and Pacific ports of the United States, may be so withdrawn free of duty, under such regulations as the Secretary of the Treasury may prescribe.

ASSIGNMENT OF ERRORS.

The findings of the court are printed at pages 16 to 18 of the record. Error is assigned to the conclusion of law that the plaintiff is entitled to judgment (pp. 18, 27).

ARGUMENT.

I.

The drawback on bituminous coal is plainly repealed by the act of 1890, unless it be continued by the special provisions of § 25 of that act.

The Revised Statutes, the act of 1883, and the act of 1890 each contain a complete scheme of tariff duties, supplemented by a free list. There can be no doubt that each in turn repealed the prior legislation concerning the dutiability of the various classes of goods imported. Occasionally, and incidental to a provision imposing a duty upon some particular class of goods, a clause will be found providing for a special drawback of such duty or some part thereof. It is not argued here that the administrative provisions of any of these acts repealed and abrogated all prior customs administrative legislation; but it is maintained with confidence, and we believe must be conceded, that the incidental regulations as to drawback or otherwise, which are contained in the num-

bered paragraphs relating to dutiable rates in any one of these statutes, are abrogated, if not in terms reenacted, when a new scheme is provided by the next later statute. (Rev. St., §§ 2503, 2505; Tariff of 1883, § 6; Tariff of 1890, §§ 1, 2.) The doctrine of implied repeal has been frequently laid down by this court. (*Norris* v. *Crocker*, 13 How., 429; *Murdock* v. *City of Memphis*, 20 Wall., 590, 617; *Penn* v. *Bowler*, 107 U. S., 529, 538; *Cook County National Bank* v. *United States*, 107 U. S., 445, 451; *Tracy* v. *Tuffly*, 134 U. S, 206, 223; *Fisk* v. *Henarie*, 142 U. S. 459, 468; *District of Columbia* v. *Hutton*, 143 U. S., 18, 26–7; Endlich on Interpretation of Statutes, §§ 201, 241; see also *Frost* v. *Wenie*, 157 U. S., 46, 58; *United States* v. *New York*, 160 U. S., 598, 609.)

In *Tracy* v. *Tuffly*, *supra*, Mr. Justice Harlan, speaking for the court, says:

> And while it is true that repeals by implication are not favored by the courts, it is settled that, without express words of repeal, a previous statute will be held to be modified by a subsequent one, if the latter was plainly intended to cover the whole subject embraced by both, and to prescribe the only rules in respect to that subject that are to govern.

It is clear, on comparison of the schedules in the successive tariff acts, that the test laid down by the same learned justice in *Frost* v. *Wenie*, *supra*, and repeated in *United States* v. *New York*, *supra*, is fully met:

> The last statute is so broad in its terms and so clear and explicit in its words as to show that it was intended to cover the whole subject and therefore to displace the prior statute.

Hence there is an implied repeal or abrogation of the incidental drawback provisions to be found among the special provisions of the act of 1883, even apart from the general repealing clause of the act of 1890 (§ 55). It is believed that this rule of construction has always been applied to similar provisions. (See 21 Op., 109.)

Upon this point we are in accord with the lower courts.

Judge Ross, in the opinion approved and adopted by Judge Morrow, says (Rec., p. 21):

> If there was nothing more in the act of October 1, 1890, upon the subject in question, there would be no difficulty in reaching the conclusion announced by the Attorney General in an opinion given by him in answer to a similar question propounded to him by the Secretary of the Treasury (19 Opinions of Attorney General, 687); for, as he there says, and as was said in substance by Judge Lacombe *in re Straus et al.* (46 Federal Reporter, 522), the act of October 1, 1890, was manifestly intended as a complete revision of the tariff laws, and therefore the law upon the subject in hand is to be ascertained by reference to the terms and provisions of that act.

Judge Hawley, speaking for the circuit court of appeals, says (Record, p. 31):

> It will be conceded, as claimed by appellant, that the omission from that portion of Schedule X of the act of October 1, 1890, imposing a duty of seventy-five cents a ton on bituminous coal, of the drawback clause in relation to such coal contained in the act of March 3, 1883, as amended by the act of June 19, 1886, of itself indicates the intention of Congress to abolish such drawback, and, if there were no other

provisions in relation to this matter, would be conclusive upon the subject. But it is apparent that the question is not solved by a reference only to that portion of Schedule N. The true meaning and intent of the act can not be ascertained without a careful consideration of the provisions of section 25.

II.

§ 25 of the act of 1890 is inapplicable to the drawback upon bituminous coal.

It is respectfully submitted that the opinions of the lower courts are based upon an incomplete analysis of the provisions of this section.

The second proviso is inartificially drawn, and its meaning is not at first sight clear.

Plainly it is not a proper proviso, but constitutes independent legislation. In other words, it does not in any way restrict or limit the effect of the clause to which it is appended. On the other hand, we respectfully submit that it can not be made applicable to any goods not of the nature described in the opening clause of the section, namely, "imported *materials* on which duties have been paid" which are "used in the manufacture of articles *manufactured or produced in the United States.*" In other words, it is inapplicable to goods which have undergone no process of manufacture in the United States, and which are in no sense "materials" of domestic manufacture. It is true that the second proviso of this section relates nominally to "any article" upon which drawback is allowed under existing law. Such drawback, however, is not continued at the old rating, but "at the rate

herein provided." What is "the rate herein provided"? Why, plainly, the sum "equal in amount to the duties paid *on the materials used* less one per centum of such duties." There are no "materials used" in the manufacture of bituminous coal, which is a raw material, shipped precisely in the shape in which it was imported.

This whole section, therefore, applies only to articles of domestic manufacture. It will be remembered that since 1861 we have had two main classes of drawback provisions upon exportation of goods—one applicable to goods exported in the same condition in which they had been imported, the other applicable to American manufactures made wholly or in part of foreign materials. (See acts of March 2, 1799, ch. 22, § 75, and August 5, 1861, ch. 405, § 4; Rev. St., §§ 3015 *et seq.*) Goods of the first class were subject to certain statutory regulations, such as that they should be exported in the original packages, and within three years from the date of importation. (Rev. St., §§ 3016, 3017.) The regulations as to the second class were prescribed by the Secretary of the Treasury. (§ 3019.)

The drawback upon materials used in domestic manufacture had been, as a rule, subject to a deduction of 10% (§ 3019), and it had been allowed only to a restricted extent in the case of articles partially manufactured of materials imported (§ 3020). The act of 1890, in the section under consideration, extended the drawback to all manufactures containing identifiable foreign materials, and it increased the amount of the drawback by reducing the deduction to one per cent. This was, however,

the precise deduction that had previously been required in the first class of drawbacks. (Rev. St., § 3017.) It is clear, therefore, that the second proviso in § 25 is unnecessary as well as inapplicable to drawbacks on goods *exported* in the same condition in which they are imported; while there is nothing to indicate that this coal, which is *consumed* in the same condition in which it is imported, was in the minds of the draftsmen of that section at all.

The second proviso seems to be an attempt to make sure that the drawback of 99% should be extended to all materials of domestic manufacture, without exception. It is a familiar rule that general provisions of a tariff act are held not to repeal prior more specific provisions, but that the prior provisions remain in force as exceptions to the general rule. Thus, in the well-known case of *Reiche* v. *Smythe*, 13 Wall., 162, a general provision with relation to "live animals" was held not to repeal a prior specific provision with regard to birds; and this principle was cited as one of the grounds of the decision of the court. (See also *Movius* v. *Arthur*, 95 U. S., 144, 146.) This second proviso was presumably inserted in order to save all question as to such drawbacks as those mentioned in Rev. St. §§ 3020, 3026, and in the Shipping Act of June 26, 1884, § 17.

III.

The abrogation of the drawback on bituminous coal does not violate the presumed intent of the legislators of 1890.

The learned counsel for defendant in error rely much

upon a supposed general intent of the Congress of 1890 "to enlarge the drawback system as a means of stimulating the export trade," to "reduce revenue and increase protection to domestic industry," etc. It is difficult to perceive how the export trade can be stimulatd by cheapening coastwise transportation. One domestic industry, indeed, namely, this of coastwise transportation, would be stimulated by continuing the drawback upon bituminous coal. Another domestic industry, however, namely, that of coal mining, would thereby be injured. In so far as the drawback was availed of, the mining industry would suffer. It is notorious that nothing was further from the desires of the Congress of 1890 than to protect domestic industries by relieving them from the duties upon raw materials. That was the purpose of the Congress of 1888; but the men who controlled the Congress of 1888 were the minority in the Congress of 1890.

It is respectfully submitted, however, that no method of tariff construction would be more vicious than one which distorts the clear letter of the statute in order to conform to some supposed general policy inferred from the history of the times and from the other provisions of the act. Every tariff act puts some industries up and others down. While certain general policies may be clearly observable, they are never worked out in detail through all the various provisions. (See *Bate Refrigerating Co.* v. *Sulzberger*, 157 U. S., 1, 36–7, and cases cited.)

It is presumable that Congress thought it best to classify the coastwise shipping interest with other coal-using

domestic industries; that it saw no reason why American vessels should be relieved from the duties upon coal any more than from the duties upon other supplies; and that it regarded the act of 1884, above quoted, relieving American vessels engaged in the coasting trade and in the trade between our Atlantic and Pacific ports, to be a sufficient invasion upon the claims of domestic producers of raw materials.

To the extent allowed by the act of 1884, coal is still practically upon the free list (21 Op., 92, 93); but it is respectfully submitted that this defendant in error has no right to exemption from the burdens borne by our industries in general, and that the judgments of the lower courts should therefore be reversed.

EDWARD B. WHITNEY,
Assistant Attorney General.

Supreme Court of the United States.

October Term, 1895.

Calendar No. 337.

THE UNITED STATES *vs.* CHARLES R. ALLEN.	On Writ of Certiorari to to United States Circuit Court of Appeals, Ninth Circuit.

BRIEF FOR DEFENDANT IN ERROR ON SUBMISSION OF THE CAUSE ON THE MERITS.

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Supreme Court of the United States.

October Term, 1895.

THE UNITED STATES *vs.* CHARLES R. ALLEN.	Certiorari to United States Circuit Court of Appeals, Ninth Circuit.

Brief for Defendant in Error, the said Charles R. Allen, on Submission of the Cause for Decision.

Statement of the Facts.

In the month of February, 1891, the defendant in error, an importer and dealer in coals at San Francisco, supplied 117½ tons of duty-paid bituminous coals, in four several lots, as fuel to and for the steamer *Humboldt*, a vessel of the United States, regularly engaged in the coasting trade between sundry ports in Northern California, and said supplies were so used as fuel. On each occasion, within a due time before the lading of these coals on board, the said defendant applied to the Surveyor of the Port of San Francisco to have the coals inspected, weighed and laden on board, under supervision of the proper customs officers, with a view to obtaining drawbacks of the duties paid thereon, as aforetime; but the Surveyor, conceiving under the instructions

of his superior officers, that drawback allowances on such coals had been abolished by law, refused to have the coals inspected, weighed and laden on board by and under supervision of his officers.

Within ten days after expiration of the aforesaid month, the defendant in error made due entry at the Custom House for the drawbacks of duty paid on said coals, and demanded the customary drawback certificates; but the Collector of the Port denied that drawbacks were allowable on the coals, and refused the certificates.

Thereupon the said defendant in error brought his action against the United States in the District Court of the United States for the Northern District of California, and the cause having come to trial on the merits, the defendant in error, as plaintiff in said court, recovered judgment for $87.24, the amount of drawbacks claimed, with costs.

The United States appealed the cause to the United States Circuit Court of Appeals for the Ninth Circuit, by which court the judgment below was affirmed, whereupon the United States prayed a writ of *certiorari* from this honorable court.

The facts of the case have never been in issue, the only question from first to last being whether the drawbacks to which the defendant in error would have been entitled under the Act of March 3, 1883 (22 U. S. Stat., 511), as amended by the Act of June 19, 1886 (24 U. S. Stat., 81), had or had not been taken away by the Act of October 1, 1890 (26 U. S. Stat., 600).

Summary of the Argument for Defendant in Error.

1. That the drawback of duty on imported bituminous coal used for fuel on steam vessels of the United States, as granted in Schedule N of the Act of March 3, 1883 (22 U. S. Stat.,

511), amended by section 10 of the Act of June 19, 1886 (24 U. S. Stat., 81), is not taken away by the general repeal of inconsistent laws in section 55 of the Act of October 1, 1890 (26 U. S. Stat., 617).

2. Nor is it taken away by the failure of Schedule N of said Act of October 1, 1890, to re-enact the allowance of the drawback.

3. But the said drawback allowance is preserved by section 25 of the said Act of 1890.

4. The spirit and reason of the Act of October 1, 1890, are in favor of the drawback herein claimed and would be violated by its denial.

5. That Act was not designed to reverse or restrict the policy of encouragement to American shipping.

6. Though the Act was a complete revision of tariff duties, it did not displace all pre-existing laws relating to the customs and revenue system.

7. In that Act the drawback system was liberalized and in nowise diminished.

Brief for the Defendant-in-Error.

From and after the taking effect of the Tariff Act of 1883 merchant steamers trading within or with the United States were allowed to obtain fuel supplies of bituminous coal duty free by the grant of a drawback of the import duties paid on such coals. By the Act of 1886, this privilege was confined to American vessels, a circumstance of no consequence in this case, because all the coals upon which drawback is claimed were supplied to a single American vessel.

So the law stood when the Tariff Act of 1890 went into operation. It is not to be denied, we conceive, that so far as fixing rates of duty are concerned, that Act completely displaced all prior enactments.

The language of the Tariff Act of 1883 in relation to bituminous coal, is as follows:

"Coal, bituminous and shale, seventy-five cents per ton of twenty-eight bushels, eighty pounds to the bushel. A drawback of seventy-five cents per ton shall be allowed on all bituminous coal imported into the United States which is afterwards used for fuel on board of vessels propelled by steam which are engaged in the coasting trade of the United States, or in the trade with foreign countries." * *

The language of the tariff act of 1890 is as follows:

"Coal, bituminous and shale, seventy-five cents per ton of twenty-eight bushels, eighty pounds to the bushel; coal slack or culm, such as will pass through a half inch screen, thirty cents per ton of twenty-eight bushels, eighty pounds to the bushel."

The difference between the two Acts are as follows: In the act of 1883, the provisions for slack coal or culm and for coal, bituminous and shale, are separately paragraphed, and that for slack coal comes first, while in the Act of 1890, the two classes of coal are paragraphed together and slack coal put last. Secondly, the Act of 1890 omits from the coal schedule the former provision for drawback on bituminous coal used as fuel for merchant steamers.

As for the bringing of the two classes of coal into a single paragraph, the Act of 1890 did no more in this respect than had been done before. See page 474, Revised Statutes, U. S., where the coal duties are thus expressed: "Slack coal or culm, such as will pass through a half-inch screen, forty cents per ton of twenty-eight bushels, eighty pounds to the bushel; bituminous coal and shale, seventy-five cents per ton of twenty-eight bushels, eighty pounds to the bushel." That the Act of 1890 should return to the compact arrangement of 1874 is not surprising. The transposition of the two classes of coal, in restoring the

old arrangement of paragraphing them together, may be reasonably explained on the familiar ground of a preference given to the more important of two similar and associated things. There had to be a choice as to whether the one kind or the other should be placed first, and the first place was quite naturally given to the more highly rated kind. To infer from this mere scrivener's work a legislative purpose to reimpose upon American shipping some of the burdens from which it had been freed amid much patriotic fervor would be to carry argument to the point of absurdity.

The omission of the drawback provision from the coal paragraph of the Act of 1890 necessarily meant one of two things; either that the drawback allowance was intended to be taken away, or that the intent was to provide for it elsewhere. To have meant to take it away would have been to double the Tariff Act upon itself, because the objects of that Act were to reduce revenue and increase protection to domestic industry. To abolish this drawback would have been to increase revenue and reduce protection. Therefore, to argue that the omission of the drawback provision from the coal paragraph of the Act of 1890 meant an abolishment of the drawback would be to fly in the face of the Act itself; to take a position opposed to its spirit, its reason, its policy. Upon him that takes such a position is the burden of argument to make it good.

But such a position cannot be made good in view of what is provided by section 25 of the Act of 1890. It seems wise, if not necessary, to quote the whole section, which reads as follows:

"That where imported materials on which duties have been paid, are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less one

per centum of such duties: *Provided*, That when the articles exported are made in part from domestic material, the imported materials, or the parts of the articles made from such materials, shall so appear in the completed articles that the quantity or measure thereof may be ascertained, and *Provided further*, That the drawback on any article allowed under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported shall in all cases where a drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used, and the amount of duties paid thereon shall be ascertained, the fact of the manufacture or production of such articles in the United States, and their exportation thereform shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either or to the person to whom such manufacturer, producer, exporter, or agent shall in writing order such drawback paid under such regulations as the Secretary of the Treasury shall prescribe."

Now, let us examine this section in detail. It first provides for a drawback of the duties, less one per centum, paid on materials used in domestic products which are exported. Then it provides for the special case wherein an exported domestic product is made partly from imported and partly from domestic materials. Next it provides for a continuance of existing drawbacks on "any article," but at the new and liberalized rate under which the drawback was to be equal to 99 per cent. of the duty paid, instead of the smaller percentage allowed by the prior laws. Then it goes on to provide safeguards to the revenue against excessive or fictitious drawbacks. Lastly, it prescribes the various classes of persons to whom drawbacks should, alternatively, be paid.

This section was a great broadening of the drawback

system as a whole. In general it increased the drawback payment by nine per cent. It extended the drawback privilege to exported articles composed only in part of imported materials. It gave an assignable quality and a commercial value to a drawback right, so that a manufacturer or producer, selling his products to another for export, could obtain the full price and pass over to the purchaser the right to receive the drawback. Prior to the act of 1890, it was very difficult and often impossible to obtain drawbacks in cases where the producer was not the exporter.

It is manifest that the whole intent and object of this section 25 of the Act of 1890, was to enlarge the drawback system as a means of stimulating the export trade. Its purpose was quite the opposite to taking anything away; it meant to add to what was already possessed.

On what rational ground is it to be assumed that Congress meant, in 1890, to reimpose any of the burdens on American shipping but lately removed from it? Such would be the necessary effect of abolishing the drawback on steamer coal, and the legislature could not have been ignorant of it. If the view urged in behalf of the United States in this cause should prevail, our merchant steamers on the Pacific coast would have to increase their running expenses by an average of some $15 a day, or strive for a small saving upon that amount by burning less suitable domestic coals. The only ground brought forward as rational is that disclosed in an opinion of Mr. Attorney-General Miller (19, Op. 687), wherein it was held that the reversal of the relative positions of the two classes of coal in the Tariff Act of 1890; the omission of the drawback provision from the coal paragraph of that Act; the manifest character of the Act as a complete revision of the tariff, and the retention of drawback provisions in paragraphs of the

new Act relating to metals, salt and agricultural products, together with what the author of the opinion conceived to be the restriction of section 25 to exports, had worked a repeal of the drawback allowance on coal used as fuel by American steam vessels.

We have already discussed the matters of relative rearrangement of the two classes of coal and the omission of the drawback allowance from the coal paragraph. As to the other propositions we have admitted that the Act of 1890 was a revisory and complete Tariff Act, displacing all its predecessors. But nobody has yet suggested that the Customs Administration Act of June 10, 1890, was obliterated or restricted by the Act of October 1, 1890, yet such would have to be the argument to support the broad theory of the Attorney-General's opinion.

Regarding the circumstance that some paragraphs of the Act of 1890 contain provisions for drawback in addition to the comprehensive provisions of section 25, it is to be observed that the argument cuts both ways. If the Act is to be viewed as a piece of literary perfection, wherein everything is expressed and placed in the best possible manner, or in the manner most rhetorically suitable, then section 25 would lie open to the charge of redundancy. But it is notorious that statutes are in general defective in logical expression or arrangement, the legislators being careful as to substance, but not so as to form. There is nothing unusual in finding here and there in a statute special and several provisions of a like character, and then, before the close, a general or "omnibus" provision of the same kind. This is a common expedient of the legislative draughtsman to guard against the exclusion of anything intended to be included. Moreover, there were particular reasons why some of the paragraphs of the Act of 1890 should contain special drawback provisions. Take,

for instance, paragraph 522, relating to salt, wherein it is provided, first, that imported salt may be bonded and then used, without payment of any duty, for curing fish taken or cured in the domestic fisheries; and, secondly, that meat exporters shall have a refund of the entire duties paid on salt used in curing exported meats, but only in amounts not below one hundred dollars. Obviously such methods for remitting or refunding duties would not be adapted to all proper cases of refund duties, and, hence, a necessity for special provision. So, in the case of tin plate, paragraph 328, where the increased duties imposed on the article threatened the large export trade in canned products. There the provision for drawback was inserted at the very time and place, to make sure of guarding, then and there, against the apprehended danger, without leaving anything to the chance of what might appear in later parts of the Act.

The position taken in the opinion of the Attorney-General, that section 25 is limited to exports is, for the United States and perhaps for the defendant-in-error, the most important point of the argument. While it is possible that section 10 of the Act of June 19, 1886 (24 U. S. Stat., 79), might be construed to save the drawback on coal fuel for domestic vessels from the repealing section of the Act of 1890, it must be conceded that this claim to drawback finds the strongest support in the language of section 25 of the Act of 1890.

The objection to regarding all the provisions of said section 25 as limited to articles exported is that no operation whatever would be given to the language following: "That the drawback on any article allowed under existing law shall be continued at the rate herein provided." The language preceding that just quoted had provided a drawback for every conceivable export into which duty-paid material had entered, whether wholly or partly, and on broader

terms of encouragement than most exports had ever before known. Why, then, should Congress, after completely covering the ground, proceed to traverse the identical ground again? The Legislature must be presumed to have known that besides drawbacks on exports there was an existing drawback right on duty-paid bituminous coal used as fuel for domestic steamers engaged in the coasting trade of the United States, and nothing could be more apt than the way in which the Legislature proceeded, after providing for every possible case of export, to preserve this other drawback privilege. No argument for the defendant in error could be more direct or strong than the whole language of section 25 itself. Whoever reads it would have to use interpolation and impute redundancy to make it mean what is contended for in behalf of the Government. The defendant in error needs only to rely upon the language as it stands, reading nothing into or out of it, nor depending upon a circuitous argument to impart to it other than its simple, obvious interpretation.

Respectfully submitted,

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